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Colombia (Republic of Colombia. 1886- ) Laws,  
statutes, etc. Mining law

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# THE MINING LAWS OF THE REPUBLIC OF COLOMBIA

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TRANSLATED  
WITH AN INTRODUCTION AND NOTES  
BY  
PHANOR J. EDER  
OF THE NEW YORK BAR

PRESS OF BYRON S. ADAMS,  
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com

**DEDICATED  
TO  
HIS EXCELLENCY  
DR. CARLOS E. RESTREPO  
President of Colombia**

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**DEC 20 1912**



## PREFACE.

In view of the growing importance of Colombia as a mining country and the daily increase of English and American capital invested in its mines, no apology is needed for publishing a translation of its mining laws. A translation of the Mining Code was published some twenty years ago by Charles Bullman, M. E. Not only have there been important changes since then, but Mr. Bullman, though a competent engineer with considerable experience in Colombia (he died in that country a few years ago), was no lawyer, and his work not only contains frequent positive errors of translation, but evinces a general disregard for the "letter of the law," and occasionally, when it encounters a passage particularly troublesome to translate, overcomes the difficulty by the simple expedient of completely omitting it from the English text.

It would, however, be ungrateful of me to deny having received considerable assistance from Mr. Bullman's work. I am also somewhat indebted to the translations of the *Civil Code* and of the *Law of Civil Procedure of Panama and the Canal Zone* by Frank L. Joannini, issued by the Isthmian Canal Commission, Washington, 1905, and for the occasional rendering of a knotty word or phrase whose near equivalent (exactness is often impossible so widely do the English and Spanish systems of law differ) involved much groping, to the various translations of the Mexican Mining Code, to *Walton's Civil Law in Spain and Spanish America*, etc. Dictionaries, of course, are no help in such cases, but *Lucas's English-Spanish Dictionary of Mining terms* (London, 1905) is a handy little book worthy of honorable mention.

To the student of comparative law, Walmesley's *Guide to the Mining Laws of the World* (London, 1894) may be recommended; also Aguillon's *Legislation des Mines Francaise et etrangere* (3 v. Paris, 1891) and Carbonell's *Economia*

*Minera* (Legislacion de Minas), Madrid, 1907-8, based largely on Aguillon. The two latter, however, unfortunately do not include Colombia. In 1892 the Bureau of American Republics, then in its infancy and not the splendid institution which it now is, published (Bulletin No. 40) a compilation in English of the Mining Laws of Latin America, very uneven in quality and unscholarly.

Of the Colombian Books, the standard edition of the Mining Code is that of *Velez and Uribe*, fully annotated. References in my notes are to the first edition. Dr. Velez is the author also of a History of Colombian Law and of exhaustive Commentaries on the Civil Code; and Dr. Uribe of a treatise upon Easements of all of which I have made use. In addition to the Civil Code, the other Colombian Codes, notably the Judicial and Fiscal, must also be consulted in connection with the mining laws.

The most recent edition of the Mining Laws is that of *Dr. Eduardo Rodriguez Piñeres*, in compact form. I have followed the plan of this work; namely, inserting amendatory or related laws in their appropriate places following each article of the Code: to economize space, however, instead of publishing the subsequent laws in full at the end of the volume as he does, I have indicated the place in the Code of each article of the law so incorporated in the main text.

New York.

PHANOR J. EDER.

## INTRODUCTION.

Thirst for the precious metals was one of the most powerful stimulants to the Spanish conquest of the New World, and the country now known as Colombia is especially interesting historically as the scene of the most active search for "El Dorado." The early *Conquistadores* indeed sought only to obtain the treasure amassed by the Indians, but in their wake mines were soon discovered and worked.

In the earliest colonial days various isolated legal provisions (emanating from the Spanish Crown as the private owner of the Colonies) were made, but the first complete code was that constituted by the *Ordenanzas de Minas del Peru*, 1541. A few years later, the viceroys were directed to enforce the laws of Castille relating to mines, and were recommended to issue such further ordinances as they deemed suitable, in accordance with which recommendation the viceroy Francisco de Toledo gave out the ordinances of 1574, with the approval of Philip the Second, and these were completed 25 years later by the viceroy, the Marquis de Canete. Meanwhile, in Spain, the Monarch published the Ordinances of August 22, 1584, founded on the principles of the German legislation (which in turn undoubtedly derives from the Roman),<sup>1</sup> and these were made applicable to America. These various ordinances, together with sundry minor provisions of various dates, were codified in the celebrated *Ordenanzas del Peru*, published in 1683.

These ordinances were of very liberal character considering the epoch in which they were promulgated and the generally retrograde and unprogressive spirit of the Spanish colonial system, and although concessions were limited to 30 years, the exploitation of quicksilver, theretofore monopolized by the

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<sup>1</sup>See the splendid article of J. B. Mispoulet, taking as a text the recent discoveries at Aljustrel, Portugal. *Le Régime des mines à l'époque romaine et au moyen âge*, in *Nouv. Rev. Historique de Droit Français et étranger*, Vol. 31 (Paris, 1907), pp. 345, 491.

King, was permitted. The *estaca* or territory marked off for the Crown, adjoining a newly discovered mine, was put up at public auction, and naturally generally purchased by the neighboring owner.

These ordinances were in force till replaced in 1785 by the still more celebrated ordinances of New Spain (Mexico), which had been issued two years previously for the latter colony, and which continued as law in Colombia till after the Independence. This famous code not only forms the basis for most of the present-day Spanish-American legislation and jurisprudence on mines, but also for the subsequent legislation in Spain itself, and has had a marked influence on the mining law of the United States as it was in force in the territories acquired from Mexico. It is unnecessary here to give a résumé of these laws, as they are accessible in English in a translation by *Charles Thompson* (London, 1825), in *Gamboa's Commentaries*, translated by *R. Heathfield* (London, 1830), and in the works of *Rockwell* (*Spanish and Mexican law*, New York, 1851), and *Halleck* (*Mining Laws of Spain and Mexico*, San Francisco, 1859).<sup>1</sup>

These ordinances were expressly continued in force in Colombia by a decree, entitled, Regulation of Mines, which was sanctioned as law in 1829, with certain modifications contained in the decree itself.

Laws of only minor importance were passed in the next decades.

In 1858 the constitution of that year, more completely adopting a confederate system of government, left mines, with the exception of emerald and salt mines, under the jurisdiction of the sovereign states. Some of the states declared mines to be the property of the owner of the soil; others, like Antioquia, permitted their denouncement as before. Until 1886, therefore, when the form of government was again changed

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<sup>1</sup>See also *Engin. Magazine*, Vol. 27 (1904), p. 921, *Commentaries on Mining Ordinances of New Spain*, and *Proc. Am. Inst. Mg. Engin.*, Vol. 32 (1903), p. 520-565. (Historical Sketch of Mining Legislation in Mexico) and the various editions and translations of the present laws of Mexico.

and the states lost their sovereignty, becoming merely departments of a centralized government, the national laws dealt only with the emerald and salt mines and mines in the public lands reserved by the Federal Government.

Meanwhile, in 1867, the sovereign state of Antioquia, the most important in the country from a mining standpoint, had adopted a Code of Mines which went into effect January 1, 1868, and constitutes (with amendments) the mining law of the Republic of Colombia to-day.

The constitution of 1886 declared public lands, mines and salines, formerly belonging to the states, to be the property of the nation, as likewise gold, silver and platinum mines, and those of precious stones in national territory. Pursuant to the greater authority now possessed by the national government, a law (No. 38, of March 15, 1887) was passed adopting the Mining Code of the State of Antioquia and amendatory laws, with certain exceptions, as the Mining Code of the Nation. It is this Code, with the amendments thereto, that is here translated.

A brief review of this Code as a whole may be of assistance in arriving at a clearer understanding of it.

Nearly all mines within Colombian territory now belong, as an inheritance from the Spanish crown, to the Nation, which reserves to itself for revenue purposes the exclusive right to exploitation of many of them, such as emerald, coal, salt and guano. To enable such mines to be worked, special concessions have to be obtained or special contracts made with the Government. Other mines and mineral deposits of any kind in *public lands*, and gold, silver, platinum and copper mines, irrespective of the ownership of the soil, can be freely located and worked under the general laws; in a few exceptional cases of certain mines on private lands devoted to agriculture, or held by educational or charitable institutions, consent of the owner is required; and there are other minor restrictions and limitations which need not here be gone into. The area of vein or lode mines allotted is 1,800 x 240 meters; alluvial mines, either 3 x 3 or 2 x 5 kilometers; other deposits, 2 x 2 kilometers. Measurements are taken on the surface.

Foreigners have the same rights (except temporarily in the Choco or Darien regions) as natives to locate and own mines, where given such rights by treaty or where their own home laws give reciprocal rights to Colombians.

The proceedings to acquire a patent or government title to a mine are, first, discovery or location (chapters 2, 3 and 9); second, denouncement (chapter 4); third, delivery of possession (chapter 5); fourth, issuance of the patent or adjudication of the mine (chapter 7).

The first step in the proceedings is by giving notice of location or discovery to the Alcalde or other corresponding local authority of the district where the mine is situated, setting forth the situation and name of the mine, together with a precise description of it. Entry thereof is made in a book kept for the purpose, and a certified copy of the record is given to the applicant. Location can be made either personally or by an agent.

Within ninety days after the notice of discovery a more formal location or denouncement is made and filed with the Governor of the Department, accompanied by the Alcalde's certificate above mentioned. This document must set forth, in addition to the description of the premises located, a base line, to be taken for a survey of the claim, and must contain the Revenue Officer's receipt showing the payment of the proper fees. If the document is defective in any particular it is returned to the applicant with notice of the defect, and a time is set within which to make the necessary corrections.

The denouncement being found to be in due form, the Governor orders formal possession to be given in the name of the Government, and appoints a public officer, generally the Alcalde, as special commissioner for that purpose. The commission and the other documents must be delivered by the claimant to the Alcalde within twenty days thereafter, under penalty of forfeiture. An extension of time equal to the ordinary traveling time required is allowed, and the forfeiture may be redeemed if proof be made that delay has been caused by serious illness or acts of violence.

Notice that possession is to be given is then advertised for at least three weeks by affixing posters to that effect in the public place and by proclamation made by the town crier on every Sunday. Proper records of the publication and the advertising are kept. Owners and denouncers of adjacent mines must be specially cited to appear. Service of citation is made either personally, or by publication for ninety days.

After the expiration of the period for publication, the claimant must, within sixty days, petition the Alcalde to name a day for the delivery of possession, not less than five days nor more than forty days thereafter. If he fail in due time to make petition, or if he fail to appear on the appointed day, the claimant loses all his rights unless his absence be for just cause legally proven. If it is the commissioner or other public functionary who fails to appear (in which case he is punished by being compelled to pay the cost of proceedings), a new day is appointed. Usually, of course, it is the petitioner who has to defray the expenses, which are often heavy, owing to the lack of proper transportation facilities, as he has to provide mounts as well as food for the whole cavalcade.

If no opposition is made, the commissioner, upon an appointed day, proceeds to have the surveyors measure off the ground. In actual practice, this is, of course, done beforehand. After the survey the commissioner solemnly announces that he delivers possession in the name of the Government, and formal minutes of the proceedings, including a correct description of the premises as surveyed, are written up and signed by all present.

Chapter 6 treats of oppositions. If opposition be made, the conflicting claims are tried out by the courts, the proceedings being begun by an informal notice of contest filed either with the Alcalde or directly with the Circuit Judge. Later a formal written opposition must be filed in court. Opposition can also be made on the day possession is to be delivered, by an adjoining owner claiming that the new mine

overlaps his property, in which case the subsequent suit is one to determine boundaries.

Opposition suspends the act of giving possession until the termination of the suit.

Where no opposition is made or after the termination of judicial proceedings, the minutes of the act of possession are transmitted to the Government office. The petitioner must, within sixty days solicit the issuance of the patent or title deed. If he fails to do so without just cause, the mine is treated as deserted and can be denounced anew by the first comer, as a mine of "ancient discovery." The proceedings in the case of deserted and abandoned mines are somewhat different from those respecting new mines, every effort being made to safeguard the possible rights of the prior owners. (Chapters 20 and 21.)

If the papers are in proper shape and the fees duly paid, the Patent is issued. This is a long document called in Spanish "Titulo," and constitutes a grant of mining rights. It recites all of the previous proceedings at considerable length, including the judgment roll, where there has been opposition, as also the order that the title issue, and the receipts for the payment of fees.

The Patent after issuance must be registered. No work need be done on the mine, as the payment of a small annual tax assures the preservation of the owner's rights. Taxes are dealt with by Chapter 11. Both location fees and annual taxes are extremely low.

An examiner searching the title cannot, however, rest content with the Patent, as it may be voidable in whole or in part or even absolutely void. (Chapter 8.) It may contain various defects, some of which can be corrected upon payment of additional fees; others render it void in part, as, for instance, where there has been a grant of an area greater than allowed by law, the grant being void as to the excess. Where the mine has been denounced under a wrong name, or where it has been denounced as of new discovery, when it was of ancient discovery, the Patent is voidable at the in-



stance of either prior claimants or new locators. Likewise the title is voidable where the name of the last possessor has been omitted or changed, or absolutely void if this is done wilfully.

Where an adjacent mine owner has not been duly cited the Patent is voidable at his instance. Where the recitals inserted in the Patent, due to the fault of the patentee, are not correct, the title is absolutely null and void as to the whole thereof. Where such alterations are not imputable to the fault of the party, it is void merely as to such alterations, though if the patentee fail to obtain a correction of the title in due time after knowledge of the defect, the title becomes null and void and fails to guarantee any rights.

Liberality in permitting the acquisition of mines would be useless if provision were not also made for the necessary means of working them. In this respect, too, the mining code is very generous, treating mines practically as public utilities and granting to mine owners not only all necessary rights of way, but other servitudes (Chapter 12). Valuable water rights (Chapter 14) go with the mine, and the miner is given the right to construct and maintain all needed ditches, reservoirs, water courses and drains, and is at liberty to go far afield for supplies of wood, clay, &c., when the adjacent lands cannot supply him.

Provision is made by the Code for the protection of vested municipal and private water rights, and of course, as in other classes of eminent domain, compensation must be made for property taken and damage caused. Damages are assessed by a board of three appraisers nominated, one by each of the contesting parties, and the third appointed by the Court. The miner can also be required to give a bond to answer for damages, which may be caused by working the mine (Chapter 13).

As between different miners in the same locality, the law in regard to waters does not seem very wise, since it makes priority of time in the discovery of the mine the test for

preference, regardless of whether the mines have been actually worked and the water used or not.

In conclusion, a word or two of caution as to Colombian Mining Companies (Chapter 16) may not be amiss. Mines can be owned and worked by ordinary corporations or commercial partnerships, as well as by individuals, but a great number of mines in Colombia are in the hands of mining partnerships or companies governed by the provisions of the mining code. This form of business organization is something *sui generis*, partaking partly of the characteristics of our corporations and partly resembling our partnerships and joint stock associations. The mining partnerships of our own land possess even more points of resemblance. Every claim held by one of these mining companies is considered divided into twenty-four equal shares or rights (*derechos*). No one should buy these shares without a thorough understanding of the nature of these companies. One or two peculiarities may be pointed out.

The death of a partner does not cause dissolution of the company, but his shares descend to his heirs. Shares, however, cannot be freely sold until after the partnership as a whole and the individual partners have been given an opportunity to purchase them. Upon the failure of a partner to pay his quota of expenses after due notice served either personally or by publication, his shares may be forfeited. On the other hand, if the company, as a whole, decides not to work the mine, any partner can do so on his own account.

At meetings, votes are counted according to the number of shares represented in person or by proxy; a majority rules, but in case of a tie, recourse is had to the highest court of the district, and the deciding vote is cast by an arbitrator appointed by the presiding judge. Partition proceedings can at any time be instituted by any shareholder as a matter of absolute right, even against the will of the majority.

This possibility of intervention by the courts, more readily invoked than is usual under the common law system of

jurisprudence, renders it advisable for investors contemplating purchase, to obtain when possible all outstanding shares and not merely a controlling interest.

Of the chapters of the Code not already mentioned Chapters 1 and 27 are entitled "Preliminary" and "Final" provisions, respectively; Chapter 10 relates to the preservation of mining rights and revalidation of titles (this latter part being practically obsolete); Chapters 17 and 18 to possession; Chapter 26 contains a number of miscellaneous provisions, the most important article being Art. 451 in regard to liens and priority of debts; and the other chapters (15, 19 and 22 to 25 inclusive) relate to litigation. The amendatory laws, while of course important, do not affect the main principles of the Code as outlined.

CONSTITUTION OF THE REPUBLIC OF COLOMBIA  
(ADOPTED 1886).

TITLE 19.

Art. 202. The following property belongs to the Republic of Colombia:

1. The property, income, estates, securities, rights and rights of action which belonged to the Colombian Union on the 15th of April, 1886.

2. The public lands, mines and salines which belonged to the States, the ownership whereof is hereby regained by the Nation, without prejudice to rights vested in third parties by said States or in said States by the Nation, as compensation for damages.

3. The mines of gold, silver, platinum and precious stones existing in national territory, without prejudice to rights acquired under prior laws by discoverers and exploiters in regard to any such mines.

*Law 38 of 1887*, Art. 1. The Code of Mines of the extinct State of Antioquia and the laws additional thereto and amendatory thereof, with the exception of that part of law 38 of 1877 which was suspended by the Supreme Court, is hereby adopted, with the amendments contained in this present law.

*Law 153 of 1887*, Art. 324. In the Codes adopted, the designations of corporations and officers, such as United States of Colombia, State, Territory, Prefect, Corregidor and the others which by virtue of the change of institutions may require in some cases a technical substitution, shall be applied to those to whom they analogously and logically correspond.

## MINING CODE.

## CHAPTER I.

## PRELIMINARY PROVISIONS.

Art. 1. Mines existing in the territory of the State belong :

1. Mines of emeralds and of rock salt, to the Nation.
2. Mines of gold, silver, platinum and copper, to the State; and
3. All other mines of whatsoever class to the owner of the land.

Art. 2. The State cedes the possession and ownership of its mines to all nationals and aliens who, pursuant to the general laws, have legal capacity to acquire the dominion of things, in the form and under the conditions expressed in this present law.

*Law 38 of 1887*, Art 2. Mines of gold, silver and platinum are denounceable under the terms of the Code hereby adopted, and under the conditions imposed by this law.

Mines of precious stones are likewise denounceable, but their area shall be a square with a base of one kilometre, measured in the direction indicated by their denouncer. Mines of the other mineral substances, whether metallic or not, which may be found in public lands, with the exception of deposits of coal, guano, or of any other similar fertilizer and of salt springs and *banks* of rock salt, are likewise denounceable, with the following area: Lode mines, as provided by the Mining Code of Antioquia for mines of such classes; sedimentary mines, such as iron minerals known as bog-ore, and those found in strata, shall have the same area as those known as alluvial mines, that is to say, five square kilometres.<sup>1</sup> The provisions of this article shall be without

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<sup>1</sup>Amended by Art. 1st of Law 40 of 1905, reproduced immediately after this article. In regard to the area of alluvial mines, see Law 153 of 1887, Art. 313, page *infra*.

prejudice to rights vested under prior adjudications made pursuant to the laws.

*Law 40 of 1905*, Art. 1. Private individuals are hereby prohibited from hereafter denouncing emerald minerals in the territory of the Republic.<sup>1</sup>

*Law 21 of 1907*, Art. 7. Article 2 of Law 38 of 1887 and all provisions concordant therewith are applicable to copper mines; that is, such mines are denounceable like those of gold and silver.

In those sections of the country in which copper mines have heretofore belonged to the owners of the land wherein they are situated, such owners shall have a period of one year, not renewable, within which to protect their rights<sup>2</sup> pursuant to the general laws in regard to mines. On the expiration of the said term, copper mines in the whole of the Republic shall remain subject to the general provisions as to mines.

The titles to copper mines issued, pursuant to the laws, prior to the day on which this present law goes into effect, shall be considered valid.

*Law 72 of 1910 (Oct. 28)*, Art. 1. From and after the time this present law goes into effect, platinum mines shall be denounceable by, and adjudicated by the Nation to, private persons and may be exploited by them, under the terms and conditions established by the laws in regard to gold and silver mines.

*Id.* Art. 2. After the present law is sanctioned, and until the Codes and laws in regard to mines and public lands be revised and reformed to meet the new needs and conveniences of the Nation, adjudication of such properties to foreign individuals, entities or companies, in the region of Chocó and Darien shall be suspended.

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<sup>1</sup>See Law 40 of 1905; Legislative Decree No. 48, of 1905, approved by Law 6 of 1905; Law 21 of 1907, Arts. 5 and 6; Executive Decree No. 981 of 1905; Fiscal Code, Arts. 1109 to 1115, and Law 292 of 1875 (Antioquia), Arts. 40 and 42.

<sup>2</sup>*I. e.*, to obtain a government title.

In adjudications made of such properties in the region aforesaid to Colombian nationals, during the time the present law is in force, there shall be imposed the obligation, under penalty of nullity, not to transfer the rights proceeding from such adjudication to individuals, entities or companies that are not Colombian.

*Id.* Art. 4. Platinum mines, which at the time this law goes into effect are being exploited by persons in possession thereof without any title deed of adjudication from the Government, shall not be denounceable within the year following its going into effect except by such exploiters.

*Id.* Art. 5. Mines cannot be adjudicated covering the beds of navigable rivers.

*Id.* Art. 6. The denouncers of platinum mines cannot prevent the natives washing the river-sands, in the manner customary from time immemorial.

Art. 3. Mines are an integral part of the land in which they are found and the legal adjudication thereof carries with it the implied condition, for their benefit of a servitude over and right of user of, the land necessary for their elaboration, as likewise of all other natural products which may be found in the same place in which said mines have been discovered or in the immediate vicinity and which may be necessary in order to work them: all in the manner and under the terms established in this present law.

Art. 4. The dominion of or ownership of mines is acquired by one of the following means:

1. By adjudication thereof, made by the Executive Power pursuant to this present law and the issuance in legal form of the corresponding title deed; and

2. By any of the other means transferring dominion, pursuant to the general laws, provided that there shall have been issued to the first alienor the corresponding title deed, or provided that the title deed be obtained pursuant to the provisions of Chapter 7 of this law.

*Law 38 of 1887, Art 7.* The functions attributed to the Executive Power in the mining code which is hereby

adopted shall be deemed given to the Governor of the respective department, and in the corresponding cases to the authorities of the same department who replace the authorities who were in office pursuant to the organization of the extinct State of Antioquia.

## CHAPTER II.

### DISCOVERY OF MINES.

Art. 5. Every individual who, pursuant to this law, can acquire the dominion and ownership of mines, has a complete right to search for, discover and prospect any mine whatsoever of the State, but subject to the following restrictions:

1. He may not do so within the area of a settlement<sup>1</sup>, nor within a distance of one hundred meters from its last outlying houses, unless the work of the mine shall be in a direction away from said settlement, and there be no probability of proximate or remote damage thereto; in which case, the police authorities may grant permission to work such mine, but all works shall be suspended immediately upon the imminency of any danger to said settlement.

2. Within the courtyards, gardens, orchards and outer yards of rural habitations, only the owners of the land in question may do so.

3. In other lands which are fenced and permanently cultivated, mines cannot be exploited nor prospecting carried on without giving prior notice to the owner of the land or to the person in charge thereof, nor without giving the security spoken of in Article 197, if it be demanded.

The person to whom such notice is given may not prevent the discovery, prospecting nor exploitation of the mine, nor may he avail himself thereof to denounce it himself; and

4. In other lands, exploration and works that may be desired may be freely carried on, but the security alluded to in the preceding numbered paragraph may be demanded.

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<sup>1</sup>For still other restrictions, see Art. 175, *infra*.



*Law 38 of 1887*, Art. 3. Alluvial mines on privately owned lands that are under cultivation or used for breeding or fattening cattle may only be denounced by the owner of such lands or with his permission.<sup>1</sup>

*Id.* Art. 4. In those departments in which, pursuant to the prior laws, the owner of the soil was also the owner of the sub-soil, lode mines on privately owned lands that are under cultivation or used for fattening or breeding cattle, may only be denounced, for the time being and until other provision is made by law, by the owner or with his permission.<sup>1</sup>

*Id.* Art. 5. Wheresoever the ownership of mines may have belonged to the owner of the soil, up to the 7th day of September, 1886, when the Constitution went into effect, each such owner shall have, for the term of one year, to be reckoned from the date of this law, a preferential right over that of any other person whatsoever, to search for, prospect and denounce any mines that there may within his property. At the expiration of one year, the mines that there may be within such properties, shall be denounceable by anyone whatsoever in the same manner as all the others may be denounced pursuant to law with the exception of those treated of in Articles 3 and 4 of this law.

*Id.* Art. 6. The gold and silver mines which have been exploited for account of the Nation at Marmato, Supia and Santa Ana, or the public lands comprised within the boundaries thereof, may not be denounced, either in whole or in part.

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<sup>1</sup>Law 38 of 1887, Art. 3, 4. A denouncement made or title acquired in contravention of these provisions is voidable. Superior Tribunal, Medellin, 1899 (Garavito, No. 3707). The consent must be given by the owner. If land is owned in common, all the owners in common must consent; consent by the manager of the common lands is not sufficient. (Resolution of the Dept. of Fomento, October 31, 1889, and October 28, 1892.) Nor can a usufructuary alone give a sufficient consent. *Veles Comentarios*, Vol. 3, No. 405. The fact that there are woods or uncultivated fields within or forming part of a cultivated or cattle estate does not render these articles inapplicable (Garavito, No. 1538). Denouncement, possession and title may be subsequently ratified, expressly or impliedly, and such ratification will be deemed equivalent to original consent. Superior Tribunal, Medellin, 1899 (Garavito, No. 3373).

*Law 153 of 1887*, Art. 314. Exploitation works for alluvial mines cannot be installed on privately owned lands that are under cultivation or used for breeding or fattening cattle, by the owner thereof except he previously denounce them, so that the tax imposed by the mining code be paid.

*Legislative decree, No. 48 of 1905*, Art. 1. In the territories in which are situated the mines reserved by the Nation, there may not be located nor denounced new mines nor continuations of existing mines, nor may old or abandoned mines be restored; neither may public lands existing within the said territories be adjudicated under any title whatsoever.

*Law 38 of 1877*, Art. 4, 1st part. Hereafter neither the ownership of mines formed in the bed and banks of the River Cauca up to the high water mark at its greatest floods, nor the surplus areas of mines denounced up to the present time in said river, shall be granted to private persons<sup>1</sup>.

*Executive Decree No. 1112 of 1905*, Art. 5. Mines in lands belonging to educational or charitable institutions may not be denounced except under the authorization of the respective owners.

*Law 292 of 1875*, Art. 52. Hereafter gold mines of the class known as alluvial or placer may not be denounced within the boundaries of patented<sup>2</sup> vein mines which have paid the tax imposed by law.

*Law 59 of 1909*, Art. 5. The adjudication of mines in the beds of rivers, or of their affluents that are navigable by steamers, is hereby prohibited.<sup>3</sup>

Art. 6. By first discoverer of a mine is meant the person

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<sup>1</sup>Law 38 of 1877, Art. 4. This was a law of the State of Antioquia, and the prohibition probably only covers that part of the River Cauca within that State; the greater part of the remaining course of the river, however, falls within the prohibition of Art. 5, of Law 59 of 1909, *infra*, as to navigable rivers.

<sup>2</sup>L. 292, Art. 52, patented—*titulado*, i. e., for which there is a government deed or title.

<sup>3</sup>Art. 6, of Executive Decree, No. 1112, 1905, stated "concessions in the beds of rivers shall not be granted except under special contracts made with the national executive power." Rodriguez Pifieres believes this article repealed by implication by the article printed in the body of the text, which, however, it will be noted, is limited to *navigable* streams only.

who first gives the notice spoken of in Article 8, so long as he preserves his right under the provisions of Article 118.

If he who gave the said notice loses his right, the first restorer is considered as the first discoverer, that is, the first to give the notice spoken of in Articles 346 and 367, as long as he preserves his right under the provisions of Articles 124 and 380.

He also is considered as a first discoverer who acquires the right to a mine pursuant to the provisions of Articles 78 to 83, 350 and 351.

If a person gives the notice spoken of in Articles 8, 79, 346 and 367 when he should give it in the name of another person either on account of being engaged in the work of discovery of the mine for account of such other person or being instructed by such other person to give said notice, the notice shall be deemed given for such other person, and it shall be entirely ineffective on behalf of the person who caused it to be given improperly in his own name.

Consequently in such case the first discoverer shall be deemed and considered to be, for all legal effects, such other interested party, that is to say, the person, for whose account the discovery was being made or who had entrusted to such other the giving of the corresponding notice.

Art 7. Discoveries of mines can be made either by the individual who claims their adjudication for himself or by another acting in his name and as his agent; but the name and character of discoverer always belongs to the individual for whose account the discovery is made.

Art. 8. The first thing to be done by an individual who wishes to acquire a mine is to give notice, in person or by an agent, to the municipal chief of the district where the mine is situated, that he has discovered such mine, indicating the section, or the locality and the precise point where it is situated.

If this point have no certain name by which it is generally known, it shall be clearly determined by reference to the

closest known point, in such wise that it cannot be confounded in any way with any other point<sup>1</sup>.

*Law 292 of 1875*, Art. 1. If the mine it is desired to acquire be situated in territory of various districts, it shall be sufficient to give the notice required by Articles 8, 79, 346 and 367 of the Mining Code to the municipal chief of any one of such districts.<sup>2</sup>

Art. 9. The municipal chief shall keep a book wherein to enter a minute of the notice given to him pursuant to the provisions of the preceding article.

Such book shall be so arranged that it shall not be easy to add thereto or take therefrom any page or pages, and the pages thereof shall be numbered and rubricated<sup>3</sup> by the municipal chief of the district and by his secretary and there shall be placed at the beginning thereof a record of the number of pages which the book contains.

*Law 292 of 1875*, Art. 5 (*amends Art. 9 by adding thereto:*) The book treated of in the preceding article shall be closed at the end of each year and shall be transmitted to the office of the secretary of Finances (*Hacienda*)<sup>4</sup> for custody in said office and a copy thereof shall be left in the archives of the municipal chief.

Completed books now in the offices of the municipal chiefs shall likewise be transmitted to the said Secretary's office for the same purpose.

<sup>1</sup>Art. 8. The discoverer must mark the place where the mine is situated by some permanent mark, and must so state upon giving his notice of discovery, and must refer to other identifying landmarks, trees, stones, etc., not more than three kilometers distant from such marks. The officer receiving the notice may, upon application of any interested party, verify at the expense of the discoverer the identification and situation, but without therefor delaying the recording of the notice. Art. 2, Executive Decree No. 761, of 1887. The landmark can be of the usual kind employed for real estate, *e. g.*, trees, rocks, piles of stones, posts. Superior Tribunal, Ibagué, 1895 (Garavito, No. 698).

<sup>2</sup>Law 292, Art. 1. It is the duty of the Alcalde receiving the notice in such case to transmit a copy to the Alcaldes of the other districts, who must file and record the same. The precise hour of receipt of the original notice must be recorded. Arts. 3 and 4, Executive Decree 761, of 1887.

<sup>3</sup>Art. 9. The "rubric" is the flourish at the end or bottom of a signature and, in Spanish countries, is frequently used alone.

<sup>4</sup>Law 292, Art. 5. Books are sent to the office of the Governor. Art. 6, Decree 761, of 1887. The Alcalde's Secretary must index them.

The Executive Power shall issue suitable regulations to carry into effect this article and to assure that said books may be arranged and preserved with scrupulous fidelity.

Art. 10. The minute spoken of in the preceding article<sup>1</sup> shall be made in the following form:

First, there shall be placed the number corresponding to the entry. The numbering commences with Number 1, and shall be in strict consecutive order.

Next, there shall be written the date and the approximate hour of the day, written out in full.

Next, there shall be written the corresponding record. All the circumstances spoken of in Article 8 shall be enumerated pursuant to the information furnished by the giver of the notice.

No erasures, alterations or interlineations must be made. If any mistake be committed, a proper correction shall be made at the foot by means of a note, setting forth the erroneous word or phrase and the form in which it should be.

Finally, the minute shall be signed by the municipal chief, by the giver of the notice, two witnesses and the secretary. If any of these persons cannot sign their names, a note of such fact shall be made and a record that the minute has been read to him by the person chosen by him therefor. No person shall be allowed to act as witness who cannot sign his name, unless it be impossible to obtain others who can sign, in which case due record thereof shall be made.

Art. 11. Immediately upon the giving of the notice spoken of in Article 8, the secretary shall write out the minute referred to in the preceding article and forthwith upon the legal authentication of such minute, a copy thereof shall be issued on ordinary paper to the person giving the notice.

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<sup>1</sup>Art. 10. *I. e.*, Art. 9 of the Mining Code.

Arts. 10, 11. It is the duty of the Alcaldes to receive the notice at any time and place, even outside of their office, and forthwith to comply with the necessary requisites. A notice given outside of the office has priority over one given later, but in the office. See *Velez Uribe*, pp. 182, 183. When two or more notices are given on the same day to the same official, the records must be drawn up in the order of receipt. Art. 5, Decree 761, of 1887.

Art. 12. The date of the respective entry in such book shall be the date of the discovery of the mine and shall serve as the point of departure to make effective the rights acquired by virtue of such discovery.

Art. 13. The minutes found in the book spoken of in Article 9 are presumed to be genuine unless there appear erasures, alterations or interlineations which change the meaning of the entry as it appears in the copy issued to the interested party.

But in every case, proofs rebutting this presumption shall be admissible, as also proofs as to the falsity in whole or in part of the minute.

Art. 14. (*Amended by Law 38 of 1877, Art. 6, to read as follows:*) Notwithstanding the provisions of the preceding articles, the notice given to the municipal chief does not establish any right in favor of the giver thereof if the mine be in any of the cases of Articles 78 and 342 of the mining code, or in the case of Article 33 of law 292.<sup>1</sup>

Art. 15. The *Guacas*, or burial places and courtyards of the Indians, are declared to be the property of the persons who exploit them<sup>2</sup>. Such persons shall have the right to make such exploration and erect such works as may be suitable to the exploitation; but such right may only be used if such exploitation cannot cause damage to public works, settlements, waters used thereby, and private houses.

The limitations imposed upon discoverers of mines in Article 5, in addition, extend to the present case.<sup>3</sup>

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<sup>1</sup>Art. 14. Art. 33, L. 292, amends Art. 364 of the Code, *q. v.*

<sup>2</sup>Art. 15. If there be any doubt as to whether a *guaca*, etc., be exploitable under this article, the Alcalde of the district decides the question; from his decision appeal can be taken to the Governor, and from the Governor's order to the courts. Arts. 53 and 54, Decree 761, of 1887.

<sup>3</sup>*Cf.* Arts. 700 and 701 of the Civil Code, in regard to buried treasure, which provide that treasure found shall be divided equally between the owner of the land and the discoverer, provided the discovery was accidental or the result of search with the consent of the owner of the land; otherwise, the treasure belongs totally to the owner of the land.

## CHAPTER III.

## CLASSIFICATION, AREA AND SURVEY OF MINES.

Art. 16. Mines, by their formation and for the effects of this law, are divided into three classes:

1. Lode mines (*de filon*), such as those of precious stones, gold and silver, called vein mines (*de veta*).

2. Sedimentary or bed mines, as are usually those of iron and copper.

3. Alluvial mines formed in alluvial beds with precious stones or metals deposited by water and generally called placer (*corridos*) mines.

Arts. 17 to 21 (*Repealed by law 292 of 1875, Art. 54*).

*Law 292 of 1875, Art. 2.* The discoverer of a vein mine, either new or abandoned, in a new lode (*cerro*) or in a known fissure (*filon*), shall have the right to an area of three continuous claims (*pertenencias*), at his option, without prejudice to the rights of abutting owners.

Consequently for all legal effects, the distinctions heretofore made between mines in an absolutely new lode, new mines in a known lode and new mines in a fissure known and worked in other parts, shall cease.

Art. 22. For the effects of the present law, mines shall likewise be considered as vein mines, if formed of *thin streaks* (*hilos delgados*),<sup>1</sup> crossed and ramified in diverse directions, when they have to be registered separately.

Art. 23. The area of each claim (*pertenencia*), shall be a rectangle, 600 metres long and 240 metres wide.

Consequently, to a person entitled to three claims there shall be delivered a rectangle 1,800 metres long and 240 metres wide; to a person entitled to two claims there shall be delivered a rectangle 1,200 metres long and 240 wide; and to a person entitled to only one claim there shall be delivered

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<sup>1</sup>Art. 22. Hilos delgados—Bullman translates "stringers."

the area pertaining thereto, pursuant to the foregoing paragraph of this article<sup>1</sup>.

Art. 24. In every document of denouncement there shall be fixed clearly two points, to determine the line which is to serve as base line for the survey of the claim or claims to be delivered, and another point, generally known, to indicate towards which side of the land the survey must be continued. For this latter point, the four cardinal points of the compass may be employed.

Art. 25. The measurement of the claim or claims to be delivered shall be taken on the surface of the land and not be calculated on a horizontal plane.

Art. 26. For such measurement, there shall be taken, as point of departure, the description given in the document of denouncement pursuant to the provisions of Article 24, but any alterations desired by the recipient of the mine may be made provided there are no nearby patented or denounced mines or provided the owners of such mines consent to such alterations, and without prejudice to the provisions of Article 41.<sup>2</sup>

But the measurement of the mine cannot be made in a place, locality or section different from those set forth in the document of denouncement.

Art. 27. A claim or claims surveyed for delivery to a person, must be indicated clearly by means of four land-

<sup>1</sup>Art. 23. The former law under the repealed Arts. 17 to 21, made a distinction, now abolished, between different classes of vein mines. To-day, all vein mines are entitled to three pertenencias, that is 1800 x 240 metres. In addition, where the mine is situated on public lands, the denouncer has a preferential right to a government grant of 500 hectares adjacent to the mine. See Law 75 of 1887, *infra*, p. 137.

<sup>2</sup>Art. 26. Executive Decree 761, of 1887, Art. 7, prescribes the details for surveying the rectangle. The straight lines enclosing the figure are, naturally, the boundaries of the claim. Art. 8, *id.* If the officer deem the variations proposed by the denouncer not permissible, he may suspend the proceedings and obtain the decision of the Governor. If the Governor find the suspension to have been notoriously unjust and without reasonable excuse, he shall order the new proceedings to be had at the expense of the officer at fault. Art. 9, *id.* When the denouncer has once definitely staked his base lines, it cannot be varied, even though the possessory proceedings, for some reason, have to be repeated, unless failure to make the change would injure some interested party, or unless all interested parties expressly consent to the variations.



marks placed in the four angles or corners of the figure, and constructed in such way that they cannot be destroyed by the lapse of time.

Art. 28. The area of gold placer mines hereafter adjudicated shall not exceed a square of five kilometres on each side<sup>1</sup>.

The discoverer who avails himself of the right granted in the second paragraph of the following article<sup>2</sup> shall never be entitled to receive a surface area of more than five kilometres in length.

*Law 153 of 1887*, Art. 313. The area of alluvial mines shall be a square of three kilometres on each side, or a rectangle with a base of two kilometres and the sides of five kilometres.<sup>3</sup>

The area of sedimentary mines and those found in layers or beds shall be a square of two kilometres on each side.

Art. 29. The provisions of Articles 24, 26 and 27 extend to the measurement of the area of gold placer mines when the denouncer desires the maximum that he can receive to be given to him.

If the denouncer contents himself with an area notoriously less, no survey whatsoever shall be necessary, but said area

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<sup>1</sup>Art. 28. See Law 153 of 1887, Art. 313, immediately following.

<sup>2</sup>*I. e.*, Art. 29.

<sup>3</sup>A Resolution of the Governor of Bolivar, approved by the Department of Hacienda, June 8th, 1903, lays down the following: A mine of 3 kilometers in length situated in the bed of a river can be worked to a distance of a kilometer and a half from the central line, and in one of 5 kilometers in length a dredge may work in the sands deposited in the beds or bottoms of any of the ramifications, existing or future, provided that it does not occupy a distance greater than 1 kilometer on each side of the line which serves as a center to measure the length of the claim. In case two branches of a river are separated by an island of more than 2 kilometers in width and there exists in one of the branches a *pertenencia* (mining claim) of 5 kilometers in length, and consequently 2 of base, it is indispensable to make a new denouncement in order to work the other branch. When the principal course of a river breaks through a bend, which is distant more than 1 kilometer from the central line of a mining claim of the same class, there is the right solely to work the rectangle over which possession was received. A denouncement of any of the ramifications of the sands of a river made after the acquisition of a mining claim must, in order to be valid, refer to mines which are distant more than 1 kilometer from the central line which served to measure the 5 kilometers in length of the mine situated in the bed of the river of which possession has been taken.

shall be clearly designated and staked out so that it can at all times be known with precision.

But the provisions of Article 26 shall always be followed in marking out such area.

Art. 30. The restorers of abandoned mineral lands are subrogated to the rights of the original owners of such mines with such restrictions only as are set forth in detail in this present law.<sup>1</sup>

Consequently the restorer of a mine is entitled to the same number of claims delivered to the original discoverer of the mine.

And if said mine at its abandonment had a greater area than the claims delivered to the original owner, such excess must be denounced separately or it shall continue to possess the character of abandoned.

Art. 31. The claims delivered to the restorer of a mine shall, insofar as possible, without attacking the legal rights of a third person, form a single parcel, in the form prescribed in Article 23.

#### CHAPTER IV.

##### DENOUNCEMENT OF NEWLY-DISCOVERED MINES.<sup>2</sup>

Art. 32. The discoverer of a mine who desires to acquire it, must denounce it within ninety days from the day deemed to be, in accordance with Article 12, the day of discovery.

Art. 33. The denouncement shall be made by a document addressed to the President of the State<sup>3</sup> in the form and with the requirements following:

1. There shall be clearly set forth, the district, section,

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<sup>1</sup>Art. 30. *Uribe* is of the opinion that easements are not subject to this subrogation. *Servidumbres*, pp. 224, 225. And a decision of the Superior Tribunal, Ibagué, 1886, points out that there is no legal tie, no *privity*, between the restorer and the original discoverer, except in regard to the area of the claim to be given.

<sup>2</sup>Ch. IV. Art. 41 in this chapter treats, however, of the denouncement of a mine as a continuation of another mine.

<sup>3</sup>Now the Governor of the Department.

locality and precise situation of the mine and three or four of the best known points in the vicinity so that it may be impossible to change it for another.

2. If the place where the mine was discovered has no special name by which it is generally known, all necessary indications shall be given so that it would be impossible in any case to confound such place with another. If necessary the denouncer can have the place where he has discovered the mine, visited by two witnesses, in order that such witnesses may be present when possession is given and identify the precise place; such fact shall be stated in the document<sup>1</sup>.

3. The data required by Articles 24 and 29, for the survey of the mine, shall be set forth.

4. A statement shall be made as to whether the mine is in an absolutely new region (*cerro*), or whether it is a new mine in a known region, or whether it is a new mine on a lode (*filon*) known and worked in other parts, in accordance with the definitions of Articles 18, 19 and 20<sup>2</sup>, in case the mine is a vein mine. If the mine is a continuation of another mine, there shall be stated in which direction the continuation denounced extends.

5. There shall be stated the names of all partners, when the mine is claimed by more than one person, and the share belonging to each partner; such statement, however, does not prevent changes in regard thereto in the future.

6. If the mine be denounced by an ordinary company,<sup>3</sup> there shall be stated likewise in the document the name of the president or manager elected in conformity with the provisions of Article 283.

7. (*Repealed by Law 38 of 1887, Article 12, and replaced by:*)

*Law 14 of 1888, Art. 2. The document of denouncement*

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<sup>1</sup>It is advisable also to give a name to the mine in the document of denouncement. (Velez and Uribe.)

<sup>2</sup>Subd. 4. These Arts. have been repealed, see *supra*, and in practice the requirement of this paragraph is not carried out.

<sup>3</sup>*I. e.*, mining company, as defined and regulated in Chapter 16 of this Code.

shall contain at the foot thereof, the receipt of the respective collector of revenue or else such receipt shall be annexed thereto, evidencing that the tax has been paid<sup>1</sup>. Without this requirement the denouncement shall not be proceeded with.

Art. 34. There shall be annexed to the document of denouncement a copy of the record spoken of in Article 10. Such copy may be written upon ordinary paper.<sup>2</sup>

Art. 35. Upon the presentation of the document of denouncement at the office of the Secretary of Hacienda, it shall be carefully examined to see whether it contains the requirements enumerated in the foregoing articles. If one or more of such requirements be lacking, a clear statement of those which are lacking shall be made and the document shall be returned to the denouncer and a reasonable time shall be assigned to him to correct the defects noted.<sup>3</sup>

Art. 36. If within the period indicated the denouncer shall properly correct his papers, the denouncement shall be deemed made within the period fixed by Article 32 and have the effect of assuring his rights acquired by the discovery of the mine.

Art. 37. If the mine be a vein mine, there shall be presented, with the denouncement, a specimen of the ore; and from the specimens so presented there shall be formed in the office of the Secretary of Hacienda, an arranged and methodical collection, the name of the mine from which it comes being ticketed on each specimen. Such collection shall form the basis of a mineralogical cabinet to be created in the State; and for that purpose the specimens collected shall be sent every six months to the Rector of the State College.

<sup>1</sup>Art. 33. The Collector must note the hour of payment. Art. 25, Decree 761, of 1887. For amount of fees see *infra*, pp. 58 *seq.*

<sup>2</sup>Art. 34. The denouncer must also furnish the requisite amount of official stamped paper (papel sellado). Art. 24, Decree 761, of 1887. Uribe, *Servidumbres*, p. 233 n, points out a grave defect in the law in failing to provide a penalty.

<sup>3</sup>Art. 35. The clerk receiving the papers must note thereon the day and hour of receipt and the number of pages of stamped paper furnished. The Governor may not reject the denouncement for substantial invalidity (except for usurpation of the rights of the Nation), but opposition must be made as provided in the Code, and decision left to the courts. Arts. 27, 28. Decree 761, of 1887.

*Law 38 of 1887*, Art. 12. The duty of presenting forty-eight grains of gold is hereby abolished<sup>1</sup>. When the denouncement refers to a lode not in sight, but previously exploited, specimens of ore need not be presented, but such fact shall be set forth in the document of denouncement.

Art. 38. (*Expressly repealed by Law 292 of 1875, Art. 54.*)

Art. 39. If an ordinary company be constituted for the denouncement of a mine and in the document of denouncement the names of one or more partners be omitted, those who caused such omission shall forfeit their rights in favor of the partner or partners whose names they omitted; and such document, for all legal purposes, shall be deemed made by said partner or partners not therein mentioned.

Art. 40. The denouncement of mines may be made by the party or parties in interest in person or by someone else on his or their behalf.<sup>2</sup>

Art. 41. When a mine is denounced as a continuation of another mine, there shall be clearly stated the direction in which it extends from the existing mine. No space shall be left between the claims previously delivered and those delivered by virtue of the new denouncement.

The owners of abutting mines may not in any case exercise any preferential option.

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<sup>1</sup>Art. 37. Required under former laws.

<sup>2</sup>Art. 40. Assignment of the rights of a discoverer or restorer of a mine must be by *escritura publica* (notarial act) to be valid. Superior Tribunal, Ibagué, 1895 (Garavito No. 3356). *Contra*, Superior Tribunal, Medellín, 1898 (Garavito No. 5711), holding that the practice commonly followed in Antioquia, of partial or total assignment of rights emanating from denouncement, by a simple notice thereof to the Executive, without *escritura publica*, is lawful, inasmuch as such rights are movable personal rights, and not interests in realty. Once title is acquired, it is indisputable that mines are, legally as well as actually, immovable property (real estate). The Civil Code expressly so provides (Art. 656); so also are buildings and all machinery used for mining (Arts. 656, 657). A married woman can denounce mines, if authorized by her husband, or when she is administering the community property (in Colombia, the system of community of property between husband and wife, known in our Western States, is in vogue). And she may acquire them for herself if separated from her husband. Velez' Commentaries, Vol. 7, No. 54. But, ordinarily, mines denounced by one or both of the spouses form part of the assets of the conjugal partnership (Civil Code, Art. 1786).

Art. 42. In denouncements of gold placer mines the channels of waterways are included, but without prejudice to prior vested legal rights of third parties.

Art. 43. In the case of Articles 78, 350, 351 and 366, the mine cannot be denounced while the proceedings mentioned in such articles are being carried on.

*Law 59 of 1909*, Art. 4. If the denouncer of a mine do not cause the proceedings necessary to the prosecution of the denouncement to be taken within a period of one year after the presentation thereof, the mine shall be deemed abandoned. This provision includes mines at the present time denounced.

## CHAPTER V.

### MANNER OF GIVING POSSESSION OF MINES.

Art. 44. After presentation of the document of denouncement of a mine under the formalities prescribed in Article 33, the Executive Power shall order possession of the mine to be given to the denouncer, whatever may be the class of mine denounced.

Art. 45. In the same order, the Executive Power shall designate a public official having administrative jurisdiction<sup>1</sup>, as a commissioner to give possession. Such commissioner shall be one of the officers of the district where the mine is, situated.

If the mine comprise territory in two or more districts, the officer commissioned may belong to any or either of such districts and shall have jurisdiction for all acts that he may have to execute in the discharge of his duties in the other districts<sup>2</sup>.

*Law 292 of 1875*, Art. 7 (*amends* Art. 45 *by adding thereto:*) The municipal chief commissioned to carry out the proceedings of possession of mines, shall, on demand of the de-

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<sup>1</sup>Art. 45. Usually the Alcalde.

nouncer, commission the police inspector of the region where they are situated, to give possession thereof.<sup>1</sup>

Art. 46. (*Amended by Law 292 of 1875, Art. 8 as follows:*) The Executive Power shall despatch an order to the Commissioner giving him such instructions as he may deem proper, for the carrying out of the necessary proceedings and shall annex thereto the corresponding poster or notice (*cartel*)<sup>2</sup> wherein it is announced that possession of the mine, clearly specified, is about to be given. The original papers shall remain in the respective secretary's office. If the remittance of the despatch is intrusted to the party in interest, he shall deliver the roll of documents to the Commissioner *within the term of the distance*<sup>3</sup> and twenty days additional, under penalty of the denouncement being deemed invalid, together with all other proceedings in virtue thereof, in case delivery be not made within said term.

In order that the provision of the preceding paragraph be complied with, a record shall be made on the original papers, signed by the party in interest, of the delivery to him of the despatch.

Art. 47. The period fixed in the second paragraph of the foregoing article may be extended by an order of restitution, provided the party in interest furnish full proofs that he was prevented from delivering the papers at their destination by a serious illness or by force or violence. Urgent and pressing business is ground for an extension for one day only. Such proof shall be presented to the Executive Power and shall be passed upon by him; if there be opposition by a third party,

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<sup>1</sup>I. e., the commission is delegated. The Alcalde may also, at the request of the denouncer, delegate the possessory proceedings to some subordinate administrative officer in the locality. If there be doubt as to whether such officer has administrative jurisdiction, the Governor decides. Art. 20, Decree 761, of 1887.

<sup>2</sup>This poster and the executive order for possession are held to be essential formalities, without which a title cannot subsequently issue. Superior Tribunal, Cartagena, 1907 (Garavito, No. 5710).

<sup>3</sup>To avoid a long circumlocution, I leave literally translated "*Termino de la Distancia*," which frequently occurs and means the time necessary to make the journey from one place to another. In a country, whose railroad and road system is as poorly developed as Colombia, a journey might be a matter sometimes of several weeks' duration.

the issue must be heard by the courts, even though the Executive Power may have already decided.

Nevertheless, the decision of the Executive Power cannot be changed by the courts if the suit be instituted after possession has been given.

Art. 48. The commissioner to give possession shall immediately post in the customary public place, the poster announcing that possession of the mine is about to be given. Such poster shall remain affixed for three consecutive weeks,<sup>1</sup> and minutes of posting and removal must be signed thereon by the commissioner and by his secretary.

Art. 49. In addition to the posting spoken of in the foregoing article, the said notice must be publicly cried on each Sunday of the three weeks during which it must remain affixed and formal record of each proclamation shall be made, which shall be signed by the commissioner<sup>2</sup> and his secretary.

Art. 50. When a mine is situated in various districts, the Executive Power shall send to each one thereof a poster so that the public officer of the administrative branch whom he commissions for that purpose shall carry out the proceedings provided in the two preceding articles. After having done so, such officer shall transmit the records to the commissioner to give possession.

Art. 51. If the period of affixing of the poster pass without any opposition being made, the giving of possession of the mine shall be proceeded with at the place where it was discovered, citation having been made previously of the owners or denouncers of abutting or adjacent mines.<sup>3</sup>

Art. 52. The public officer, who is to give possession,

<sup>1</sup>Art. 48. The advertisement must be in public view twenty-one full days or more, including holidays. Art. 35, Decree 761, of 1887.

<sup>2</sup>Art. 49. It is the duty of the Commissioner to diligently and carefully attend to the advertisement, proclamations and records provided for in Arts. 48 and 49. Art. 36, Decree 761, of 1887.

<sup>3</sup>Art. 51. The citation must be served, as a general rule, personally; but if the owners, etc., to be cited are absent, service is made by publication, i. e., by both posting in the town hall or corresponding office for ninety days, and by publishing in the official periodical of the Department. The possessory proceedings are meanwhile suspended. Art. 37, Decree 761, of 1887.



shall, upon arrival at the place where the mine is situated, proceed immediately to give such possession, if there be no opposition on the part of the owners or denouncers who shall have been cited pursuant to the preceding article.

For such purpose the area of the mine which should be delivered shall be surveyed pursuant to Articles 21, 23 and 28. Said survey shall be made by one or two experts appointed by the commissioner; the declarations made by the party in interest in the document of denouncement and the provisions of Articles 25 and 29 shall be taken in account.<sup>1</sup>

Upon the termination of this operation, the corresponding record shall be made and shall be signed by the officer giving possession, by the party in interest who receives it, and by the secretary or, in his absence, by two competent and duly sworn witnesses.

Art. 53. Possession shall be given to the denouncer of the mine or to any legal representative.

For this purpose a special attorney can be appointed by means of an instrument (*memorial*) delivered by the principal to the secretary of the commissioner or to the municipal chief of the district where he may be, if he be at a place other than the mine.<sup>2</sup>

Art. 54. In the record of possession there shall be specified with entire clearness, the permanent and known objects found at the place or site where it was given, as also the landmarks with which the figure has been marked out, so that for all time the place where possession was given and the area of the mine delivered may be known.

Art. 55. Whenever the officer who has to give possession is in doubt whether the point to which he has been conducted

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<sup>1</sup>Art. 52. *Re* the survey, see Chapter III, *supra*, and the detailed provisions of Decree 761, of 1887. It is, of course, the duty of the Alcalde (Commissioner) to select competent experts. Art. 45, of said decree. All persons present at the possessory act should be enumerated in the record and should sign, but failure to sign, by others than officials, does not vitiate the proceedings. *Id.* Art. 44.

<sup>2</sup>Art. 53. A power given pursuant to this article does not authorize the attorney to conduct litigation. Superior Tribunal, Cali, 1895 (Garavito, No. 4140).

for that purpose is that designated in the document of denouncement, he can demand that the party in interest identify it fully and until this is done, possession shall not be given. The proofs shall be taken by the commissioner, and the party in interest, in case of an unjust adverse decision, can appeal to the superior officer.<sup>1</sup>

Art. 56. If, when there has been no opposition, the denouncer of the mine does not solicit possession thereof within sixty days after the day on which the term for the fixing of the poster expires, or does not appear to receive possession on the day named by the officer to give it, except for just cause legally proven,<sup>2</sup> he shall lose the right to have such possession given to him and the mine shall remain deserted for the purposes of this law.

*Law 292 of 1875, Art. 9.* When the party in interest or his legal representative appears to solicit possession of the mine, within the period prescribed in Article 56, the officer commissioned shall, within twenty-four hours thereafter, name a date when the possessory proceedings shall commence. Such date shall not be less than five nor more than forty days thereafter.

*Id.* Art. 10. If the possession be not carried out on the day named, by fault of any of the officers whose presence at the act is indispensable, the expense of such possession shall be borne by the culpable officer.

*Id.* Art. 11. In the case provided in the preceding article

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<sup>1</sup>Art. 55. A reasonable time must be given by the commissioner within which to identify and any proofs the party requests taken shall be taken speedily and the matter shall be decided by the commissioner within three days thereafter. Notice of the decision must be served personally upon the claimant, who may appeal within two days thereafter to the Prefect of the Province. The proofs can also be presented to the commissioner verbally at the time of giving possession and if satisfactory to the commissioner the proceedings shall continue. The record shall show the occurrence, but without necessity of inserting the proofs. The Prefect of the Province must decide the appeal within four days after receiving the papers, but he can order such proceedings to be had as he deems necessary to arrive at a correct decision. Arts. 29 to 32, incl., of Decree 761, of 1887.

<sup>2</sup>Art. 56. If possession be actually given, it will be presumed that there was a just excuse. Supreme Court, 1899 (*Gaceta Judicial*, vol. xiv, p. 115).

and also where the party in interest, for just cause legally proven, does not appear to receive possession on the day named, a new date shall be appointed, to give possession, in the periods prescribed by Article 9.

*Id.* Art. 12. It is the function of the Executive Power to pass upon the proofs presented by the party as a reason for his default in soliciting or receiving possession within the periods fixed by Article 56 of the Mining Code.<sup>1</sup>

It is likewise the duty of the Executive Power to declare the responsibility of the culpable officer in the case of Article 10, upon examination of the record and proofs presented to him by the parties<sup>2</sup>.

*Id.* Art. 13. If the party in interest, in order to avoid delay, pays the expenses of possession in a case where they should not be charged against him pursuant to Article 10, he shall have the right to obtain execution therefor against the party liable upon making oath of the amount thereof before the judge, after the declaration referred to in Article 12, paragraph 2, has been made.

Art. 57. When there has been opposition and it has given rise to a suit which has been decided in favor of the denouncer or when said suit has been terminated by settlement, the period of sixty days within which to ask possession, shall be counted from the day when the commissioner for

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<sup>1</sup>When the denouncer wishes to open his default, he petitions the commissioner to take the proper proceedings wherein he may make proof of his excuse. The commissioner transmits the record and proofs to the governor with a report and his own opinion as to the justice or injustice of the claim. Art. 38, Dec. 761 of 1887.

<sup>2</sup>When a claim against any of the officers for the expenses of the proceedings is made by the denouncer, the latter must petition the commissioner to send the record, together with the proofs he may adduce, to the Governor for decision. The commissioner before remitting the record obtains a report from the officer in question, but is allowed eight days to prepare it, and he may add to it such proofs as are proper.

Upon receiving a report or at the expiration of the time therefor the record must be remitted to the Governor with an opinion as to the merits of the petition. If the commissioner himself be the person accused the record is passed over to the municipal attorney. Arts. 39 to 43, Decree 761 of 1887.

Holidays are included but traveling days excluded in reckoning times prescribed. Velez and Uribe, p. 172.

possession, receives the papers; the original papers shall be remitted to him in due time by the judge of the cause.

The same shall be done when there has been opposition and it has been declared abandoned or dismissed.

Art. 58. (*Amended by Art 14, Law 292 of 1875, to read as follows:*)

The proceedings for possession of mines shall be had at the expense of the denouncers, who must furnish the necessary food and transportation to the public officers and experts who intervene in such proceedings.

The denouncers shall likewise pay as a fee to each one of said officers 80 cents for each myriametre<sup>1</sup> which they have to travel to reach the point where the proceedings are to be taken, and one *peso* for the possessory act.

To each expert they shall pay 40 cents for each hour they are employed in work at the place where the mine is situated and in addition 80 cents for each myriametre of the distance they have to traverse to reach such place.

But if the possessory proceedings are annulled on account of an omission imputable to the officers or experts intervening therein they must repeat the proceedings free of charge, and if it be no longer possible to do so, they shall return the fees received.

*Law 292 of 1875, Art. 15.* If in the proceedings, prior to possession, any irregularities be committed, either because the respective poster has not been affixed for the legal period or because any record has not been signed, this does not annul the possession and shall be cause only for an order of the Executive Power that the informalities noted be corrected.<sup>2</sup>

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<sup>1</sup>Art. 58. Myriametre = 10 kilometers = 6.2 miles.

<sup>2</sup>The Governor must specify in his order to the officers which are the papers to be replaced. If upon the repetition of the proceedings there be any opposition by some party interested, the record is turned over to the respective judge, and if not it is returned for the issuance of the title. Art. 49, Decree 761 of 1887.

## CHAPTER VI.

## OPPOSITIONS.

Art. 59. Opposition may be made from the time of denouncement of a mine till the day on which the poster should be taken down. The oppositions shall be formulated in writing. They can also be entered orally, proper record being entered in such case, duly authenticated by all who intervene in the act.

Art. 60. The opposition or oppositions that there may be do not interrupt the period of posting, but at the expiration of such period, the record shall be remitted to the judge of the judicial circuit where the mine is situated or to a competent judge, pursuant to Art. 386.<sup>1</sup>

Art. 61. Opposition can be made within the prescribed period, not only before the officer commissioned to give possession, but also before the person in office as Executive or before the circuit judge who is to pass on the case.

In these cases, the opposition is made by means of a petition which shall be forthwith transmitted to the commissioner to give possession, in order that the provisions of the preceding article may be complied with.

Art. 62. (*Amended by Art. 16, Law of 29<sup>2</sup> of 1875, to read as follows:*)

The opposition can be made by the party in interest in person, by any one exhibiting a power of attorney from him, or any one actually in charge of the mine at the time, or by any other person whomsoever who furnishes security to the officer receiving the opposition that the party, on whose behalf he speaks, will approve the act as if personally done. The object of the security shall be to answer to the denouncer of the mine for all damages which may be caused him by the opposition in case it be not approved. A record of such bond shall be made and such record shall be signed by all persons intervening therein.

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<sup>1</sup>*I. e.*, where the mine is situated in more than one circuit, a judge selected by the opposers or a majority of them.

The power of attorney to file oppositions may be granted in the form prescribed in Article 53.

Art. 63. It is the duty of the opposer or opposers, without necessity for any notice to them, to appear before the respective judge to formulate their opposition in the term of the distance<sup>1</sup> and nine days additional, reckoning from the day on which the time for posting ended.

In the record of the opposition, the day in which it is made shall be stated so that the judge before whom it is granted can decide whether or not it is made within the proper time.

Art. 64. If the opposer or opposers do not formulate their opposition within the period prescribed by the preceding article the judge shall, of his own motion, return the papers to the officer charged with giving possession of the mine, so that he may carry out such possession.

Art. 65. The owners of abutting mines can make opposition at the time possession is given, whenever they deem that there is included in the survey some part or all of their own mines. But the suit to which such opposition gives rise shall be a suit to determine the boundaries or erect land marks pursuant to Chapter 23, of this law.

Art. 66.<sup>2</sup> Opposition may likewise be made at the time of giving possession, by a person who by reason of a prior discovery, claims a better right to all or part of the claims about to be delivered; and in such case the object of the action shall be to decide which of the two denouncers has the better right to the mine or part of the mine in dispute. This form of opposition can likewise be made within the term prescribed by Art. 59, and in such case shall have the same object.

Art. 67. The opposers, in the cases of the two preceding articles, are under the duty of formulating their oppositions before the respective judge within the term of the distance.<sup>3</sup>

<sup>1</sup>See note to Art. 46, p. 33.

<sup>2</sup>Art. 66. Owners of lands whose rights are invaded by an unlawful denouncement (*e. g.*, in the case of Art. 4, Law 38 of 1887) may also oppose. (Decision of Superior Tribunal of Ibagué, 1892. Garavito, No. 3354.)

<sup>3</sup>See note, Art. 46, p. 33.

and nine days more; such period is reckoned from the day on which possession was to be given.<sup>1</sup>

Art. 68. The possessory proceedings are suspended by the aforesaid oppositions. Upon the termination of the boundary suit or suit for land marks or suit as to the better right by reason of discovery, as the case may be, the provisions of Art. 57 shall be observed.

Art. 69. If there be opposition, and it be formulated in due time, the action shall be proceeded with pursuant to the provisions of Chapters 22 and 23 and the other provisions to which such chapters refer.

## CHAPTER VII.

### TITLES.

Art. 70. By title, is meant the document issued by the competent authority to the denouncer of a mine wherewith he may make proof that the state has granted him the possession and ownership of said mine.

The name of title is likewise given to the documents and contracts so designated pursuant to the Civil Code.

But a mine is not said to be titled or patented (*titulada*), except when the possession and enjoyment thereof is assured by the title spoken of in the first paragraph of this article.

Art. 71. If possession has been given of the mine, the officer who gave it shall remit the papers to the Executive Power of the state, in the regular course, at the expense of the party in interest, for the issuance of the title. The title must be solicited within sixty days at the latest, from the time of receiving possession. If the party do not demand the title within such time, the mine shall be deemed deserted for all legal purposes.

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<sup>1</sup>Distinguish between the informal opposition and the formal entry thereof.

This term is renewable by an order of restitution provided the party amply prove, in the judgment of the person in office as Executive, that serious illness or force or violence or other just cause, prevented him from making his claim within such time.

But if before restitution is granted, the mine be denounced by another person, it is the province of the judicial power to declare whether or not there is ground for such restitution. Decision in respect thereto shall be made in the judgment in which the principal subject-matter of the suit is determined.

Art. 72. The title is deemed to have been solicited when the party in interest has paid to the general administration of the treasury the corresponding fees<sup>1</sup> and has deposited in the department of *Hacienda* the necessary paper for its issuance.

Art. 73. (*Amended by Law 292 of 1875, Art. 18, to read as follows:*)

When there is no opposition, or the opposition has not been formulated, the title deed or patent of a mine shall contain the following record:

1. A copy of the record containing the notice of discovery of the mine given to the municipal chief.
2. A copy of the document of denouncement and of the explanations or clarifications made thereto.
3. A copy of the record of the act of possession.
4. A copy of the resolution ordering the issuance of the title.
5. Evidence of payment of the proper fees.<sup>2</sup>

Art. 74. (*Amended by Law 292 of 1875, Art. 19, to read as follows:*)

When the opposition has been formulated and in conse-

<sup>1</sup>Art. 72. *I. e.*, \$4 gold. See Law 59 of 1909, *infra*.

<sup>2</sup>Art. 73. Title deeds must begin, in large and readable letters, "Title deed of the mine of" \* \* \* and must be written in durable ink, clearly and easily readable, ample margins being left at either side. They must be sealed with the official seal, stamped either directly on the paper or on wax, protected to avoid damage. Arts. 46, 47 of Decree 761 of 1887.



quence has given rise to a law suit, the title deed must contain in addition the following records:

1. A copy of the document formulating the opposition.
2. A copy of the answer thereto.
3. The part of the judgment determining the matter entered in the suit, together with the corresponding registry thereof.

If the matter be terminated by settlement, the title deed shall likewise contain the instrument, document or judicial record in which the terms of said settlement are set forth.

Art. 75. In all proceedings (*expediente*) of denouncement of mines, there shall be a record by the secretary of *Hacienda* stating whether or not the corresponding title was duly issued.<sup>1</sup>

Art 76. (*As amended by Law 292 of 1875, Art 20.*)

A person who by any reason whatsoever may have lost a title deed to a mine, can ask that it be issued anew; and it should be so reissued, whenever it appears in the record (*expediente*) or it is proven in some other trustworthy manner, that the title deed, said to have been lost, was, in fact, issued and provided that it be proved that the tax imposed under Chapter 11 has been paid.

Such right may also be exercised by a person who files proofs to the satisfaction of the Executive Power, that he is the representative, by legal right, of the rights which the original denouncer had in such mine.

In every case there shall be inserted in the new title, the petition that gives rise to its issuance.

Art. 77. When in a suit a complete copy<sup>2</sup> is presented of the record of denouncement of a mine, or, at least, of the papers specified in Art. 74, and from such copy it appears that all legal requirements for the acquisition of such mine have been complied with, including the issuance of the title,

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<sup>1</sup>Art. 75. The *expediente* is the complete roll or file of papers in a case or matter.

<sup>2</sup>Art. 77. An official or certified copy is, of course, meant.

such copy shall have all the effects of an actual title deed, provided that the title that was issued has been registered.

Art. 78. He who is in possession and working a mine by virtue of one of the titles referred to in paragraph 2 of Art. 70, but lacks that which is mentioned in paragraph 1 thereof, can acquire the latter without the necessity of denouncing the mine, provided he takes the proceedings specified in the following articles.

Art. 79. The first thing he must do is to appear before the municipal chief<sup>1</sup> in person or by attorney and give notice that he is in possession of the mine, in the manner stated, and make a declaration that he is about to solicit the corresponding title from the Executive Power.

Of the notice so given, an entry shall be made in the book referred to in Art. 9 and in the form specified in Art. 10 in so far as applicable.

Art. 80. All rights acquired by virtue of the notice referred to in Art. 8 are likewise acquired by virtue of the notice given pursuant to the provisions of Art. 79; and the provisions relating to the records to be made by virtue of the former are applicable to those made as a consequence of the latter.

Art. 81. Within ninety days after the notice referred to in Art. 79, the party in interest must appear before the Executive Power and make proof that he is in possession of the mine, that such possession is undisturbed and has lasted at least five years and that he is actually working the mine; and further praying that the corresponding title be issued to him.

Each party in interest may tack to his own time the possession of prior possessors from whom he derived his rights.

There must be annexed to the petition a copy of the record made by virtue of the notice referred to in Art. 79.

Art. 82. (*Amended by Law 292 of 1875, Art. 21, to read as follows:*)

<sup>1</sup>Or any of them if in various districts. Art. 1, Law 292 of 1875. Printed, *supra*, after Art. 8, p. 22.

If the Executive Power shall find such facts proven, he shall cause to be published, at the expense of the applicant, an advertisement in the official periodical, setting forth his claims; for the same purpose, he shall cause a poster to be affixed in a public place in the county seat (*cabecera*) of the district where the mine is situated for twenty consecutive days; he shall order that the applicant's claim be made known to abutting owners and to denouncers of nearby mines; and if within three months after the taking down of the poster there be no opposition, the title deed shall be issued. In such title deed there shall be inserted all the previous documents.

But before the issuance of the title, there shall be paid to the general administration of the treasury the fees for denouncement and for the title.

Art. 83. The party in interest must make application for the title within sixty days from the date of the decree ordering its issuance.

Art. 84. If the party in interest fail to comply with the duties imposed by Articles 81 and 83, he shall lose all rights acquired by virtue of the notice referred to in Article 79.

Art. 85. If within the period prescribed by Article 82, any opposition be made, the matter shall be passed over to the competent judge so that the corresponding action may come before him.

Art. 86. The provisions of Articles 63 and 64, paragraphs 2 and 3 of Article 71 and the provisions of Article 72 apply to the case referred to in the foregoing articles.

But the return of the papers when the opposition is not formulated, or when the suit is terminated, must be made to the department of *Hacienda*; and the provisions of paragraphs 2 and 3 of Article 71 shall apply to the period prescribed in Article 83.

Art. 87. (*Expressly repealed by Law 292 of 1875, Art. 54.*)

Art. 88. Notice of titles issued shall be given in the official paper. Such notice shall set forth each mine individually and the area that has been granted to it so that the matter

may become one of public knowledge and the mines remaining free in such region may be denounced.

A like notice, with a like object, shall be given of the mines whose denouncers have not obtained title within the periods prescribed by Articles 71, 83 and 380.<sup>1</sup>

Art. 89. Every title deed to a mine may be protocolized in a notarial office; and copies issued by the notary shall have like force and validity as the original title deed.

Copies of title deeds may also be protocolized, but in such cases copies issued by the notaries, in order to be effective, must be [officially] compared either with the original or with the papers that appear in the respective record filed in the department of *Hacienda*.

Art. 90. Ancient titles, which could be attacked only on the ground of having granted a greater area to a mine than should have been granted pursuant to the respective laws of their issuance, are hereby declared valid.

Consequently, the owners of such titles shall preserve the ownership and possession of such mines, provided they pay the corresponding tax in the manner set forth in Chapter 11 and provided said title deeds comprise a specified<sup>2</sup> area of territory, whether the same be large or small.

*Law 292 of 1875, Art. 4.* Title deeds, which could only be attacked by reason of the grant therein of a greater number of claims than should have been given pursuant to the classification of vein mines heretofore made by the laws on the subject, are hereby declared valid, provided that there has been paid, or that there be paid, the tax imposed by Chapter 11 of the Mining Code. Nothing hereinbefore contained, however, shall prejudice rights legally acquired by a third person.

Art. 91. Whenever the Executive Power, when about to

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<sup>1</sup>Art. 48, Decree 761 of 1887, provides that in each month there shall be published a statement of the titles issued during the preceding month, and notice will also be published of the discoverers or denouncers who may have lost their rights by default.

<sup>2</sup>Art. 90. *i. e.*, the boundaries must not be indeterminate, as was occasionally the case with ancient grants.

issue a title, notes that all the proceedings provided for in the preceding chapters have not been taken in the form therein provided, he shall order that the informalities be corrected, so that no title may be issued without its clearly appearing that the record has been sufficiently and properly prepared.

In the order entered, to give compliance to the provisions of the preceding paragraphs, there shall be expressed clearly which are the papers to be replaced; and in addition there may be given such proper instructions so that the correction may be made with certainty.<sup>1</sup>

Art. 92. In the title deeds that are issued there must be no erasure whatsoever. Corrections and any interlineations shall be noted at the end of the document; and, if there be none, this fact also shall appear.

Art. 93. The date of a title shall be deemed to be the date of the notice referred to in Articles 8, 79, 346 or 367, as the case may be.

If there be no record of the date of such notices, the date of the title shall be that of the document of denouncement of the mine or the petition for title deed or for survey, as the case may be.

If there be no record of the date of these petitions either, the date of the title shall be that of the possessory proceedings, and if there be no record of such date the date of the title shall be the date of its issuance.

The revalidation of a title does not alter its date.

*Law 292 of 1875*, Art. 50. Mines belong to their utmost depth to those in possession thereof under any legitimate title.

*Id.*, Art. 43.

The ownership of mines denounced and adjudicated as of

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<sup>1</sup>Art. 91. The governor of the departments must state explicitly to the commissioners what proceedings are to be replaced. If, upon making such correction there be any opposition from any interested party, the record shall be turned over to the respective judge; if not, it is to be returned for the issuance of the title. Art. 49, Decree 761 of 1887. (Action by the governors is subject to the control of the national government.) See Velez and Uribe, pp. 174, 175, 184.

gold, silver, platinum or copper shall be preserved, whatever may be the proportion in which all or some of these metals with each other or with other metals may be naturally alloyed.

*Law 38 of 1887, Art 9.* To the owners of a lode mine<sup>1</sup> belong all mineral products, found within the boundaries thereof, although not denounced.

## CHAPTER VIII.

### NULLITIES OF TITLES.

Art. 94. Titles issued under the present law are void in the following cases:

1. When they do not bear the signature of the President of the State<sup>2</sup> and of the Secretary of *Hacienda*;
2. When they have not been duly registered;
3. When a greater area has been delivered than should have been granted;
4. When the mine has been denounced under a name different to that by which the locality where it is situated is known;
5. When it has been denounced as of new discovery, being (in fact) of ancient discovery, except in the case of Articles 350 and 351;
6. When the name of the last possessor of the mine denounced, being known, is omitted; and also when said name is changed for another;<sup>3</sup>
7. When, there being owners or denouncers of abutting mines, they are not cited to give possession; and
8. When the papers inserted in the title are not in accordance with the originals from which they were copied.

<sup>1</sup>Law 38, Art. 9. This article must be deemed to refer only to lode mines that are *denounceable* under the Code and amendatory laws. Supreme Court, 1892. (*Gaceta Judicial*, vol. viii, p. 27.)

<sup>2</sup>To-day, the Governor of the Department.

<sup>3</sup>Art. 94, 6th. *I. e.*, is falsely stated.

Art. 95. The nullity mentioned in sub-division numbered 1 of the preceding article can be cured or corrected, either by presenting the title to the Executive Power for his authentication<sup>1</sup> upon comparing it previously with the original documents which should be found copied therein; or by asking for the issuance of a new title conformably to the provisions of Article 76.

Art. 96. When, in a suit, a title is presented which lacks one or both of the signatures mentioned, petition can be made that the Executive Power be applied to to certify if it is in accordance with its antecedents,<sup>2</sup> and if there is a record of its issuance.

If it so result and if, in addition, it be proven that it was duly registered it will be as valid as if it had been (originally) authenticated by the President and by the Secretary of *Hacienda*.

Art. 97. Prior to the signing of a title that has been previously drawn up, a minute (*diligencia*) shall be drawn up evidencing the occurrence, in which minute there shall be inserted a copy of the note in the original papers (*expediente*) evidencing the issuance of the title.

Art. 98. The nullity spoken of in sub-division numbered 2 of Article 94 can be cured by paying anew the title fees and registering the title.<sup>3</sup>

Art. 99. No Registrar shall inscribe any title in his books after the lapse of twenty days<sup>4</sup> from the date of its issuance, without evidence that the title-fee has been again paid. The payment spoken of in the preceding article is in case said term has already elapsed.

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<sup>1</sup>Art. 95. *I. e.*, signature.

<sup>2</sup>Art. 96. *I. e.*, with the original records.

<sup>3</sup>Art. 98. A penalty of 50%, in addition to the ordinary fees, is required upon registration after the due time. The fees and the penalty are computed according to the law at the time of issuance of the title. Law 56 of 1904, Art. 11.

<sup>4</sup>Art. 99. *Sembla* the time required for transmission by mail is added to the 20 days. Resolution of the Minister of Government, September 21, 1889 (Diario Oficial IV, 1887, No. 7888; Velez and Uribe, pp. 172-174). Law 56 of 1904, Art. 10 allows 90 days for the registration of a mining title.

Art. 100. The registry spoken of in the foregoing articles can be made even during the course of the suit in which the title is availed of.

Art. 101. In the case of the sub-division numbered 3 of Article 94 the nullity is not total but partial; that is, the title deed is void only in so far as it refers to the guarantee of the excess granted, over the area that should have been delivered.

Consequently, upon a decision that a mine is not of the class expressed in the document of denouncement, pursuant to the classification and definitions of Articles 17 to 20,<sup>1</sup> or upon the ascertainment of the true area thereof, in the manner provided in Articles 373 to 375, the title shall be valid to guarantee the claims (*pertenencias*), or the area that should have been delivered, and void as to the excess.

(*Addition, Art. 22, Law 292 of 1875.*) The title is not void in the case referred to by this article if the right of property in the excess of the mine has been preserved in accordance with Article 151.

Art. 102. Only he who denounces and asks for adjudication of the excess of a mine over the area it should have had, pursuant to the right granted by Article 366, can set up this nullity.<sup>2</sup>

Art. 103. The nullity spoken of in sub-division numbered 4 of Article 94 cannot be cured except by obtaining a new title, either by a new denouncement of the mine, or else by proceeding in accordance with Articles 78 to 87.

Art. 104. The nullity spoken of by the preceding article cannot be set up except by one claiming better right to the mine, either by virtue of a prior title or as a consequence of a denouncement subsequent to the title the nullity whereof is in question.

Art. 105. The aforesaid nullity cannot be declared, except when it is fully proven that the place where the mine is, has a name by which it is [generally] known and that there is no

<sup>1</sup>Art. 101. These articles have been repealed: see *supra*.

<sup>2</sup>Art. 102. *I. e.*, No. 3 of Art. 94.



place in proximity to the said mine designated by the name given to it in the denouncement.

Art. 106. The nullity spoken of in sub-division numbered 5 of Article 94 can be cured in the same manner as that of the sub-division numbered 4.<sup>1</sup>

Art. 107. This nullity<sup>2</sup> can be set up by any person whomsoever who denounces the mine, and by the last owner thereof who maintains and proves that he has not abandoned it; and it shall not be declared except in case it clearly appear that the mine comprises a part, at least, of another previously patented,<sup>3</sup> or in respect of which the notice spoken of in Article 8 has been given.

Art. 108. When the denouncer of a mine of old discovery knows the name of the last possessor, and either does not state it, or gives a wrong name, the title is void, and its nullity can be set up by any one whomsoever who denounces the mine, and by its last owner.<sup>4</sup>

Art. 109. When the change of the name of the last possessor is not wilful, or at least cannot be proved to be so, the nullity can be set up only by the last owner or possessor of the mine who has not abandoned it.

But if the notification spoken of in Articles 358 and 359 has been made by the press, such nullity cannot be set up, save in the case of Article 363.

Art. 110. The nullity spoken of in sub-division numbered 7 of Article 94 cannot be set up except by the abutter who was not cited to give possession, and produces no other effect than that of enabling the said abutter to regain the part of his mine of which he may have been unduly deprived.

Art. 111. The nullities established in the sub-divisions numbered 6 and 7 of Article 94 can be cured in the same way as that of the sub-division numbered 4 of the same article.<sup>5</sup>

<sup>1</sup>Art. 106. *I. e.*, by a new denouncement and title, or by the proceedings under Arts. 78-87.

<sup>2</sup>Art. 107. *I. e.*, No. 5 of Art. 94.

<sup>3</sup>Art. 107. *I. e.*, for which a patent or title has been issued.

<sup>4</sup>Art. 108. This article refers to the case of subdivision 6, Art. 94.

<sup>5</sup>Art. 111. *I. e.*, by new denouncement or by the procedure of Arts. 78 to 87.

Art. 112. The nullity spoken of in sub-division numbered 8 of Article 94 is absolute, when it can be proven that the alterations noted in the title are imputable to the party in interest in whose favor it was issued.

Art. 113. The aforesaid nullity<sup>1</sup> can be set up by any person whomsoever and even declared *ex officio*.

Art. 114. If it cannot be proven that the alterations noted in the title are imputable to the person in whose favor it was issued, the title shall be void only in respect of such alterations. It shall consequently be valid to establish the rights of the respective party in interest, but with the alterations that should be made to it pursuant to the tenor of the original documents.

Art. 115. Notwithstanding the provision of the preceding article, if the party in interest do not ask for the issuance of another title within sixty days reckoned from the day on which he had notice of the difference existing between his title and the original documents, said title shall be void and cannot thereafter guarantee any right.

Art. 116. If denouncement of a mine be made in the way expressed in Article 39 and the partners who denounced it succeed in acquiring title, such title shall be deemed issued in favor of those whose names were omitted in the instrument of denouncement, and shall be completely ineffectual to guarantee any right to those whose names figured in such denouncement. But the individuals, in whose favor the title is presumed to be issued, must resort to the Executive Power, within sixty days after the judgment is declared executory or the settlement is entered into whereby their right is declared or admitted, and ask for the issuance of a new title; in such new title, there must be inserted a copy of said judgment or settlement.

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<sup>1</sup>Art. 113. *I. e.*, No. 8, Art. 94.

## CHAPTER IX.

## PRIORITY OF RIGHTS AS BETWEEN CLAIMANTS TO A MINE.

Art. 117. He who gives the notice spoken of in Article 8 acquires, by that sole fact, a right to said mine preferential over that of every other person, save in the cases of the 4th paragraph, Article 6.

Art. 118. This right he cannot lose except in the following cases only :

1. When he does not apply to denounce the mine within the ninety days specified in Article 32.

2. When, in the case of Article 46, he does not in due time deliver the respective documents to the commissioner appointed to give possession.

3. When he does not apply for possession within the term specified in Articles 56 and 57.

4. When he does not solicit the issuance of the title within the term specified in Article 71.

5. When he does not punctually pay the tax treated of in Chapter 11 ; and

6. When, being cited for possession to be given [to another denouncer], he makes no opposition and all or a part of his mine is comprised in the possession [given].

Art. 119. Notwithstanding the provision in the sub-division numbered 1 of the preceding article, if he who discovers a mine denounces it after the lapse of the term specified in Article 32 and before any one else has made the declaration spoken of in Article 346, he regains the right he had lost ; and he can make it effective as if he had denounced the mine in due time.

Art. 120. In the case of the sub-division numbered 2 of Article 118 the discoverer will not lose his right to the mine, if he obtains a rescission (of the forfeiture) by restitution pursuant to Article 47 ; and if he again denounce the mine before another person has made the declaration spoken of in Article 346, he regains the right he had lost.

Art. 121. In the cases of the sub-divisions numbered 3, 4 and 5 of Article 118, the discoverer of a mine also regains his right to it, if he denounces it before the declaration spoken of in the aforesaid Article 346 has been made by another, and also [regains his rights], in the case of the sub-division numbered 5, by paying the arrears pursuant to Chapter 11.<sup>1</sup> In the case of the sub-division numbered 6, the right [to the mine] is not regained except by virtue of a new denouncement for abandonment of the mine.

Art. 122. In every case, the discoverer of a mine, abandoned by him, can make the declaration spoken of in the aforementioned Article 346, and provided such declaration be prior to that of every other person, his right to the mine is superior and he will not lose it except in the same cases detailed in Article 118.

Art. 123. In any case where the right of the discoverer of a mine to the acquisition and retention thereof be deemed lost, such right shall pass to the first person who makes the declaration treated of in Article 346, even though such declaration be prior to the (actual) loss of the discoverer's right.

Art. 124. The person who acquires a right to a mine, pursuant to the preceding article, loses it in the same cases detailed in Article 118, subject to the restrictions of Articles 119 to 121.

The provision of Article 122, moreover, applies to such person as well as to the discoverer.

Art. 125. Other individuals who make the declaration treated of in Article 346 acquire and lose the right to the mine in the same manner as expressed in the preceding articles, in accordance with strict priority in point of time.

Art. 126. If there be competition between the discoverer or restorer<sup>2</sup> of a mine and one who sets up a right thereto by reason of having given the notice spoken of in Article 79,

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<sup>1</sup>Art. 121. See especially Art. 163 in said chapter 11, whereby he can regain his rights by paying the back taxes before some one else has *denounced* the mine, even though the declaration provided for by Art. 346 may have been given. See note to Art. 121 in Velez and Uribe.

<sup>2</sup>Definition of "restorer" is given in Art. 347, *infra*.

such competition shall be decided in favor of him who first gave the respective notice, if the proceedings in regard to all the notices were valid. If any of the proceedings were ineffective, no right thereby will be given to the respective party in interest (in such proceedings).

## CHAPTER X.<sup>1</sup>

### RETENTION<sup>2</sup> (*Conservacion*) OF MINES AND REVALIDATION OF TITLES.

Art. 127. The individual who acquires a right to a mine conformably to the provisions of the preceding chapter, shall be protected (*conservado*) in such right by the public authorities so long as he does not abandon the mine.

Art. 128. The same right (to protection) shall be enjoyed by those to whom possession of a mine is given in accordance with the provisions of this law and to whom the corresponding title is issued, even though the denouncement and other proceedings were executed conformably to the prescriptions of the prior law.

Art. 129.<sup>3</sup> The individual to whom possession of a mine has been or may be given, before this law takes effect, also can efficaciously assure his right thereto, by duly paying the respective tax and taking the following proceedings:

1. He shall obtain testimony from at least four witnesses proving that he has been in actual possession of the mine since

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<sup>1</sup>Chapter 10. Law 38 of 1887, which adopted the Mining Code, contains (Art. 13) the following: The provisions of Chapter 10 of the Code hereby adopted are applicable to persons who have obtained possession of a mine prior to this law taking effect, and such persons shall not be obliged to pay any fees whatsoever in order to obtain revalidation.

<sup>2</sup>Chapter 10. I have avoided the use of the word "conservation" in the translation to avoid confusion with that special meaning of the word, which has been so much in vogue in recent years in the United States.

<sup>3</sup>Art. 129. Arts. 129, *et seq.* (except 139), are practically obsolete, it being unlikely that revalidation proceedings would now, after the lapse of so many years, be resorted to.

it was delivered to him, or for at least more than one year past, and that no notice has been received that there is any law suit pending as to such mine;

2. He shall take, also, some proofs to establish that said mine has not been denounced or abandoned;

3. He shall solicit a certificate from the Secretary of the Judge of the Circuit where the mine is situated, to prove that there is no law suit pending as to such mine or at least that there is no notice of the existence of any such suit;

4. He shall prepare the documents or necessary proofs to establish that he is the legitimate representative of the rights of the denouncer, if he himself be not the denouncer;

5. With all the foregoing documents and proofs he shall apply to the Executive Power and obtain an order for the revalidation of the title, provided that, after first hearing the opinion of the State Attorney, the facts enumerated in the foregoing numbered sub-divisions are deemed well proven and the title good.

Art. 130. The fact that the title was issued some days after the expiration of the term within which it should have been obtained, is no obstacle to its revalidation.

When revalidation has been obtained, the title shall have the same force as if it had been issued in due time.

Art. 131. The revalidation of a title can be effected in either of the two following ways, at the option of the party in interest:

1. By copying at the end of the title deed to be revalidated, the decree ordering the revalidation; and

2. By having a copy of said title deed made, and at the end thereof a copy of the aforementioned decree.

Art. 132. The judge, before whom the testimony for the purpose treated of in Article 129 is taken, must declare whether in his opinion the witnesses are rendered incompetent by any of the facts, making their testimony incompetent conformably to the provisions of the Judicial Code.<sup>1</sup>

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<sup>1</sup>See present Judicial Code (Codigo Judicial), Arts. 595, *et seq.*

Art. 133. By revalidation of the title, the party in interest is placed on an equal footing with those who have obtained possession and title conformably with the present law.

Art. 134. The respective party in interest shall not be deemed to lose his rights because of the rejection of any petition made conformably with Article 129. The documents on which such rights are founded shall retain the force and validity to which they are entitled pursuant to the legal provisions in force at the time they were issued.

Art. 135. If a person succeed in obtaining revalidation of his title, and it thereafter appear that the mine was in litigation when he petitioned for and obtained such revalidation, he shall lose the suit, even though he otherwise may have succeeded in establishing his rights to said mine.

Art. 136. If, in the case of the preceding article, the last term for taking proofs has already passed, the party in interest<sup>1</sup> shall be allowed a further reasonable term, in the discretion of the court not exceeding thirty days, open to both parties (*en calidad de comun*), in order that he may make effective the right granted to him by said article.

Art. 137. The titles of mines at present in litigation can be revalidated upon the termination of the suit; but in such case there must be annexed to the documents and proofs to be presented conformably with Article 129, a copy of the final judgment.

Art. 138. If one part of a mine be in litigation, but another part not, revalidation of the title may be obtained for the latter, without need of awaiting the termination of the suit.

Art. 139. The persons who have mines the ownership whereof is secured by a title issued or revalidated conformably with this law, cannot lose their right therein, except in the cases and with the formalities detailed in Chapter 21, Article 363.

Art. 140. Petitions addressed to the Executive Power,

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<sup>1</sup>Art. 136. *I. e.*, the adversary of the fraudulent revalidator.

pursuant to the provisions of this chapter, may be sent through the respective Municipal Chief or Prefect; and shall be transmitted by mail without paying postage to the state. The said officials are under the duty to forward the petitions presented to them for that purpose.

Art. 141. A petition, rejected for failure of proofs, can be renewed upon such proofs being duly supplied.

For that purpose, the proofs that are wanting, or the facts that are in doubt, shall be specified in the order denying [the petition].

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(*Law 38 of 1887*, Art. 13.) The provisions of Chapter 10 of the Code hereby adopted are applicable to persons who have obtained possession of a mine prior to the taking effect of this law, without their being obliged to pay any fee in order to obtain revalidation of the title.

## CHAPTER XI.

### TAX ON MINES.<sup>1</sup>

Arts. 142 to 145 (repealed by Law 59 of 1909, Article 2; Law 14 of 1888, Article 3; Law 40 of 1905, Article 2; Executive decree, No. 1112 of 1905, Article 23; and Law 21 of 1907, Article 8).

*Law 59 of 1909*, Art. 2. A tax on mines is hereby established as follows:

1. For the denouncement of a gold or silver mine,<sup>2</sup> the

<sup>1</sup>Chapter 11. By Art. 4, Law 64 of 1886, fiscal fees for mines belong to the National Treasury. The Government (*i. e.*, the Executive) is authorized to issue the appropriate regulations and to fix the fees. This latter privilege is limited by the various legislative enactments contained in this chapter.

<sup>2</sup>Law 59, Art. 2. Law 14 of 1888, Art. 1, provides: "A tax of five pesos (\$5) is hereby established for each denouncement of mines, which shall be funds of the National Treasury and shall be paid to the principal administrative post-office or its substitute in the capital of the respective department." Rodriguez Piñeres states this article to have been impliedly repealed and replaced by Law 30 of 1903, Art. 1, and Law 59 of 1909, Art. 2, but an examination of these articles discloses that the legal fee for denouncements of mines, not of gold, silver, or platinum, is still \$5.



denouncer shall pay a fee of fifty cents gold (\$.50), said payment being made in advance at the respective office of administration of *Hacienda*.

2. For the title deed of concession of each mine of the aforesaid metals, the owner shall pay four dollars gold (\$4).

3. Every vein mine of gold or silver, whether or not it be worked, shall pay an annual tax of one dollar gold (\$1.00) for each claim (*pertenencia*).

Mines having a greater area than one claim (*pertenencia*) shall pay in proportion, that is to say there shall be paid for each portion of a mine into which it can be divided by equal portions equivalent to one claim (*pertenencia*), annually one dollar gold (\$1.00). Mines having a lesser area shall likewise annually pay one dollar gold (\$1.00) and the same amount shall be paid for every excess over any number whatsoever of claims (*pertenencias*).

4. Every placer gold mine, having the area prescribed in Article 28 of the Mining Code shall likewise pay annually one dollar gold (\$1.00). Mines of greater or less area shall pay proportionally, but the tax shall not be less than the aforesaid sum, even though the mine be of lesser area.

Title deeds of mines issued under the formalities prescribed in the Mining Code, shall not need national stamps in order to be valid. Neither shall denouncements require stamps.

*Law 14 of 1888*, Art. 3. For each mine of precious stones, whose area does not exceed that prescribed in Article 2 of Law 38 of 1887,<sup>1</sup> there shall be paid annually five dollars gold (\$5.00).

Mines of this class, which have a greater area, shall pay five dollars gold (\$5.00) for each square kilometer and in the like proportion for the area in excess.

*Law 14 of 1888*, Art. 6. The only purpose of Article 313 of Law 153 of 1887 was to prescribe the surface area hereafter to be delivered for alluvial mines, and consequently, said article has no application whatsoever to the payment of the annual tax.

<sup>1</sup>I. e., one square kilometer.

*Law 40 of 1905, Art. 2.* such mines [emerald mines] heretofore denounced can be exploited by the owners thereof upon paying to the national treasury a rental of sixty thousand dollars gold (\$60,000) per annum, to be counted from the date on which the mine or mines begin to produce emeralds.<sup>1</sup>

*Executive Decree, No. 1112 of 1905, Art. 2.* (b) For the title deed of concession of each claim (*pertenencia*) of a \* \* \* platinum \* \* \* mine the owner thereof shall pay the sum of twenty-five dollars gold (\$25.00).<sup>2</sup>

(c) Every adjudicated mine shall pay an annual tax of ten dollars gold (\$10.00) for each claim (*pertenencia*).<sup>3</sup>

*Law 21 of 1907, Art. 8.* Copper mines shall only pay one-half the tax paid by the mines of precious metals.

Art. 146. When a title grants the right to all the mines of placer gold and vein mines, found in the specified extent of territory, the right to all the aforesaid mines may be preserved, whatsoever be the class to which they belong, provided there be paid the corresponding tax both on the vein mines as well as on those of placer gold.

Art. 147. If the tax corresponding to placer gold mines be alone paid, according to the area of land comprised by the title and as detailed in Article 145, only the right to the placer gold mines found within said area shall be preserved; and vein mines found therein may be freely denounced.

*Vice versa*, if there be paid only the tax corresponding to

<sup>1</sup>Law 40. The Government (*i. e.*, the Executive) is authorized, in its discretion, to substitute for this tax a tax not exceeding 10% of the gross product. Law 21 of 1907, Arts. 5, 6.

<sup>2</sup>The article reads "gold, platinum and silver," but law 59 of 1909, *supra*, p. 58, imposed a different tax for gold and silver mines.

<sup>3</sup>Gold, silver and copper pay at different rates, by subsequent laws. This decree holds therefore only as to *platinum* mines. This is the opinion of Rodriguez Piñeres, *Código de Minas*, p. 90; the state of the law, however, is left in some doubt, as to whether only platinum mines or *all* mines (except gold, silver and copper) should pay \$10 a year.

There has been no *express* repeal of Art. 5, Law 14 of 1888: "For sedimentary and bed mines there shall be paid a tax double that prescribed in the preceding article." The preceding article (4) prescribing an annual tax for alluvial mines of \$5 for each 25 square kilometers, and at the rate of one peso for each 5 square kilometers excess.

vein mines, pursuant to the area of land to which the title refers and as detailed in Articles 143 and 144, the right to such vein mines only shall be preserved, and placer gold mines found within the same area may be freely denounced.

Art. 148. The owners of mines, the titles whereof specify the area thereof, must pay the tax corresponding to the said area in order to preserve their right to the mine referred to.

Art. 149. (*Amended by Article 24 of Law 292 of 1875, to read as follows:*)

Notwithstanding the provisions of the preceding article, the owner of any mine whatsoever may abandon any specified part thereof by stating clearly, at the time of paying the tax, the part which he desires to preserve; and in such case he may pay only the tax corresponding to such part, to which he shall preserve full rights, without prejudice to the provisions of paragraph 2 of Article 366 in regard to the excess that there may be in the part preserved.

Art. 150. (*Expressly repealed by Article 54 of Law 292 of 1875.*)

*Law 292 of 1875*, Art. 25. Portions of mines in respect whereof there has heretofore been paid the proportional part of the tax, in order to abandon the remaining portions, without observing the requirements prescribed in Articles 149 and 150 of the Mining Code, shall be deemed under the protection of the law, provided no third person has acquired better right to such portions pursuant to the respective provisions of said Code, and provided that upon paying the first tax herein the requirements of the preceding article<sup>1</sup> be complied with.

*Id.*, Art. 26. The provisions of Articles 155 and 156 of the Mining Code shall be applicable to the case provided for in the two preceding articles.<sup>2</sup>

Art. 151. (*Amended by Article 27 of Law 292 of 1875 to read as follows:*)

<sup>1</sup>Law 292, Art. 25. *I. e.*, Art. 149, as amended.

<sup>2</sup>Law 292, Art. 26. *I. e.*, Art. 149, as amended by Art. 24 of Law 292, and Art. 25 of said Law 292, *supra*.

When the party in interest believes that his mine, according to the boundaries stated in his title deed, has a greater area than that therein stated, he may thereafter pay the tax corresponding to the excess as calculated by him, and he shall thereby preserve his right to such excess, provided that such excess be comprised within the boundaries of the said title and provided that no other person has already acquired a prior right to such excess pursuant to Article 366. The provisions of Article 163 are not applicable to this case.

Art. 152. If the title do not indicate the area of the mine, the party in interest, at the time of paying the tax corresponding to the first year, shall declare the area he calculates it to have.

Art. 153. Likewise in the case of the foregoing article, a part of the mine can be abandoned upon observing the formalities detailed in Articles 149 and 150.

*Law 292 of 1875*, Art. 37. The owner of an abandoned mine, who abandons a part thereof pursuant to Articles 149 or 153 of the Mining Code, must do so in such manner that the part which he retains is undivided and separated from the rest by lines parallel to that which served as a base line for the survey made prior to giving possession and for the issuance of the title.

Art. 154. Notwithstanding the provisions of the preceding articles, no party in interest shall be obliged to exhibit his title deeds upon making payment of the tax, but he may make the corresponding declarations and credit shall be given to his statement.

Art. 155. Upon making the payment of the tax corresponding to the first year, the party in interest or his agent shall be required to declare in detail the situation, boundaries and area of the mine and the name by which it is distinguished from other mines.

He shall likewise be required to specify one of the boundaries of the mine which serves as base for its survey, when this is asked him, in order to make effective the right granted by Article 366; this in case there be no record in the title

deed as to which was the base line for measuring the area of the mine; in case such base line be mentioned in the title deed, it shall be used in all subsequent measurements.

Art. 156. The declaration made pursuant to the foregoing article shall be transmitted to the Executive Power to be annexed to the respective roll of papers, and a copy thereof shall in addition be left in the respective office. Both the declaration and the copy shall be written on ordinary paper.

Art. 157. When mines are divided, each one of the parts thereof shall be deemed a separate mine, for the purpose of paying the tax; and consequently there must be paid therefor the tax corresponding thereto, pursuant to Articles 143 to 147, if it have a special title giving it the protection of the law.

Art. 158.<sup>1</sup> The tax spoken of in this chapter must be paid annually at any of the administrative offices of *Hacienda* or at the general office of the treasury. The first year shall be reckoned from January 1, 1868.

The payment of the tax can be made in the collection offices of any district whatsoever, to be remitted to the respective administrators, but the management and accounting of these funds shall be centralized in such administrative offices, so that the tax is not deemed paid until it has been paid in to the cashier of such administrative offices and the administrators alone can issue receipts legally proving payment.

Art. 159.<sup>1</sup> When payment is made at the office of a Collector, the Collector shall transmit the money paid in to its destination without any avoidable delay.

In this case, the payment can be made up to and including the 31st day of December of each year; but if by the 20th of January of the following year the amount shall not have been received at the respective administrative offices, the tax shall be deemed unpaid.

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<sup>1</sup>Arts. 158, 159. See note to Art. 33. It is the duty of the Governors to see that the annual tax books are carefully indexed, alphabetically, so that it may be readily and instantly determined whether the tax on a mine has been paid. Art. 51, Decree 761 of 1887.

Art. 160. Payment of the tax herein treated of may be made by any person whatsoever in the name of the respective party in interest, so preserving for the latter his right to the mine.<sup>1</sup>

Art. 161. The period prescribed for the payment of this tax can be extended by restitution, provided the party in interest make full proof, to the satisfaction of the Judge, that a serious illness or force or violence proceeding from a disturbance of public order or from any other cause whatsoever has prevented him from making payment in due time. In such case the tax shall be deemed punctually paid for the purposes of sub-division numbered 5 of Article 118, of Article 363 and other provisions relating to the present subject.

Art. 162. The payment of the tax on a mine in litigation can be made by either of the parties; but if neither of them make such payment, the mine shall become deserted.

If the party who make the payment be defeated in the suit, unless the suit was declared to have been notoriously baseless, he shall have the right to be repaid the sum so paid with simple interest thereon at the rate of one per cent per month.

Art. 163. If a person has failed to pay the tax for one or more years, he can recover his rights to the mine by paying the arrears with interest at one and one-half per cent per month, provided the mine has not been denounced prior to such payment.

Art. 164. The payment of the tax spoken of in this chapter is the only thing necessary to preserve the right to a mine which has been lawfully acquired and which is held under the corresponding title; and this guarantee is so effective in regard to mines, titles whereto have been obtained or revalidated, conformably with this law, that such mines can never be lost by virtue of denouncements made by a third party without the knowledge or personal service of citation upon the respective owner or his legal or lawful representative.

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<sup>1</sup>Art. 160. It is presumed that if payment be made by a person other than the owner it is made for account of the latter and is valid. Superior Tribunal, Medellin, 1898. Garavito, No. 3372.)

*Law 292 of 1875*, Art. 44. The tax spoken of in Article 11 of the Code of Mines may be paid for two or more years, and in such case, the mine for which the payment is made can not be deemed abandoned during the years for which the tax has been paid.

*Law 59 of 1909*, Art. 3. The owners of patented or titled mines,<sup>1</sup> which have paid the prescribed tax and are not in litigation, can assure the perpetual ownership thereof and remain free from tax in the future<sup>2</sup> by paying, in one payment, twice the amount that they would have to pay in twenty years pursuant to the Code of October 21, 1867.

Art. 165. The receipts given by the respective employees of *Hacienda* shall constitute full proof of the payment of the taxes therein specified.

Such receipts shall be itemized, stating the owner of the mine who makes the payment or for whose account it is made; the district, section, locality and region where the mine is situated; its area, kind and boundaries; the sum paid and the other facts which may be deemed proper or which the party in interest may demand.

Art. 166. The aforesaid receipts must be written on blanks especially sealed therefor and to be given faith and credit do not need to be acknowledged.

The Executive Power shall cause the necessary blanks to be sealed and shall distribute them to the respective offices.<sup>3</sup>

Art. 167. A record shall be kept in the respective office of

<sup>1</sup>Law 59. *Minas tituladas*. See Note to Art. 52, p. 20.

By this provision a title, for all practical purposes, equivalent to a title in *fee simple* under the common law, can be obtained.

<sup>2</sup>*Smelters* appurtenant to or accessory to mines are likewise free from local taxation if the tax provided for in this chapter be paid. Resolution of the Dept. of Hacienda, November 6, 1891.

<sup>3</sup>The receipts must be in the following form (Dec. 761, of 1887, Art. 52): Republic of Colombia, Department of.....of.....of..... Mining Tax. Mr. .... has paid the sum of ..... (\$.....) the amount of the tax corresponding to an area of.....(so many metres or so many claims) for the year of ..... for the mine of (placer, gold or vein, or etc.) known as..... and situated in the region of..... of the district of.....and bounded as follows (here the boundaries). The Administrator.

*Hacienda* of the payments of the tax treated of in this chapter, with an itemized statement of the facts specified in Article 165.

The appropriate book shall be kept therefor, and to it there shall be annexed each year the corresponding index.

Art. 168. The certificates of the employees of *Hacienda*, referring to the book mentioned in the preceding chapter, also constitute full proof of the payment of the aforementioned tax.

Art. 169. The individual administrators of *Hacienda* shall transmit a complete copy of the aforementioned book each year, not later than the month of February, to the General Administration of the Treasury; and the certificates of the General Administrator of the Treasury, referring to such copies shall be given faith and credit equally with the original receipts or the certificates mentioned in the preceding article.

Art. 170. If, in the course of a suit, a receipt be presented to prove payment of the tax on a certain mine, and a certificate of the respective official in which it is stated that there is no record of the payment of such tax, faith and credit shall be given to the receipt; for it is to be presumed that the latter is genuine and that by mistake it was omitted to make the corresponding entry; but the party against whose interest such receipt works, can demand that it be acknowledged, and if the officer presumed to have signed it deny its genuineness, it shall not avail. In every other case, that is to say, when it is acknowledged, or the proceedings for acknowledgment cannot be had, faith and credit shall be given to it.

Art. 171. When an acknowledgment of a receipt is demanded, pursuant to the preceding article, a copy thereof shall remain on file with the papers in the case and such copy shall be deemed a genuine receipt, in case the original be lost or mislaid.

Art. 172. When the owner of a mine loses the receipts evidencing the payment of the taxes, he can apply to the respective officer of *Hacienda* for duplicates thereof; and such



duplicates must be given, provided that there be a record of such payment in the corresponding book. It shall be stated in the new receipts that they are duplicates of those previously issued.

Art. 173. Receipts proving payment of the tax for three consecutive years give rise to a presumption of payment in the preceding years; but such presumption can be rebutted by proofs to the contrary.

## CHAPTER XII.

### SERVITUDES ESTABLISHED IN FAVOR OF MINES.<sup>1</sup>

Art. 174. Everyone who acquires the right to a mine, either by discovery or by some other lawful means, has the right to work it and to execute for that purpose all the works that may be necessary, including the erection of buildings and machinery, and the execution of all the other works which have for their object said working.

Art. 175. (*As amended by Law 38 of 1877, Art. 5, and Law 56 of 1894*).<sup>2</sup>

Nevertheless, those mines cannot be worked, the working whereof may injure public works, towns, waters used therein, and private houses.

Those mines cannot be worked, the working whereof may dirty the waters ordinarily used in towns and in agricultural, manufacturing and industrial establishments in general, whether public or private.

Nevertheless, such mines can be worked, provided the owner or manager thereof previously furnishes to such towns or es-

<sup>1</sup>Chapter 12. See also Book II, Title 11, Art. 879, *et seq.*, of the Civil Code. As to the subject of this chapter consult especially Uribe: *Servidumbres*, 3<sup>a</sup> parte.

<sup>2</sup>Art. 175. Detailed regulations as to procedure in connection with this article and its amendments are contained in Decree No. 742 de 1893. Appeal may be taken to the Governor from the decision of the Alcalde, and to the Minister of *Fomento* from the decision of the Governor in regard to suspension or renewal of work.

tablishments, sufficient clean and potable water in the judgment, in the first case,<sup>1</sup> of the Municipal Corporation<sup>2</sup> of the respective district, and in the second case,<sup>3</sup> in the judgment of three experts, appointed, one by the owner or manager of the industrial establishment, another by the owner of the mine and the third by the Governor of the Department. The Governor must appoint an engineer or a person competent in the subject.

It is the province of the Municipal Chief of the respective district to enforce each one of the provisions of this article, imposing for each violation, upon each violator, fines of five to fifty pesos or imprisonment from ten to forty days.

Every time the Municipal Chief neglects to comply with any one of the provisions of this article, he shall incur a fine of twenty to fifty pesos, which shall be imposed upon him by the Prefect of the Department upon petition of any interested party.

The resolutions dictated are appealable to the Executive Power.

*Law 72 of 1910, Art. 3.* For the purposes of Article 175 of the Code of Mines, the words public works shall be deemed to mean, roads, railroads, aerial transportation lines, overhead or underground conduits for electrical energy, and aqueducts, when such works are destined to the public service, and in general all buildings and constructions for the public use.

It is understood that when any of these works are affected by the needs of the working [of the mine], there shall not be deemed to be damages, except in case the mine operator does not, at his own expense, repair the injuries caused, so that the public service, to which the work affected was destined, may continue without interruption.

Art. 176. Neither can works be executed whereby the owner of the land is deprived of the water necessary for the use of his family, his animals, plantations and any kind what-

<sup>1</sup>The case of town waters.

<sup>2</sup>The town council or corresponding body.

<sup>3</sup>Waters used in agricultural, etc., enterprises.

soever of machinery or industrial establishments, established or in course of construction.

Art. 177. Every mine enjoys a servitude of transit [right of way] over all estates or tenements which lie between it and the public road leading to the capital of the district.

Art. 178. In addition to the servitude spoken of in the preceding article, the owner of every mine has a right of way over all tenements that may be necessary, to take to it that which is needed for its working. The transit herein referred to may be temporary (*accidental*) or permanent; and in the latter case it constitutes a servitude like that of Article 177.

Art. 179. If the owner of a tenement, subject to one of the permanent servitudes spoken of in the preceding article and in Article 177, believes such servitude to be not necessary for the working of the mine, and the owner of the mine is of a contrary opinion, the point shall be decided by experts named [one each] by the parties in interest, and the third by the judge.

Art. 180. The owner of a mine has the right to take from the tenement in which it is situated, and from the others<sup>1</sup> that may be necessary, the wood and other materials required for the construction of buildings and machinery, and in general for the working of the mine.

Art. 181. Every mine enjoys the servitude of aqueduct over all tenements that may be necessary, to conduct to the place of the works the water to serve the mine.

Art. 182.<sup>2</sup> (*As amended by Law 292 of 1875, Art. 28.*) Houses, courtyards, orchards and gardens appurtenant thereto, are not subject to the servitude of aqueduct.

Art. 183.<sup>3</sup> The passage of the waters, especially over cultivated lands, shall be by an aqueduct that does not permit overflows, nor allow the flow of water to be impeded, nor dirt

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<sup>1</sup>Art. 180. It is natural that this right is exercised only when the timber sought is not to be had in lands adjacent to the mines. Uribe: *Servidumbres*, p. 220.

Same rights applicable to smelters accessory to mines. *Id.*, p. 122.

<sup>2</sup>Art. 182. Similar to Civil Code, Art. 920.

<sup>3</sup>Art. 183. Similar to Civil Code, Art. 921.

to accumulate, and which has here and there the necessary bridges for the convenient administration and cultivation of the servient tenements.

Art. 184.<sup>1</sup> The right of aqueduct includes that of taking the waters by a course permitting the free down grade flow thereof and one that from the nature of the land, does not make the work excessively expensive.

Subject to the said conditions, the aqueduct shall be laid along the course which shall cause the least damage to cultivated lands.

Art. 185.<sup>2</sup> The shortest route shall be deemed the least prejudicial to the party interested in the servient tenement and the least costly to the party interested in the mine, if the contrary be not proven.

The public official, with jurisdiction in the premises, shall conciliate as far as possible the interests of the parties, and in doubtful cases shall decide in favor of the servient tenements.

Art. 186.<sup>3</sup> The owner of the servient tenement is obliged to permit the entry of workmen to clean and repair the aqueduct, provided, however, that previous notice of ordinary repairs shall be given to the manager of such servient tenement, if he is to be found there.

Repairs made necessary by an unforeseen accident, such as a landslide or the like, shall not, however, be deemed ordinary repairs.

Art. 187.<sup>3</sup> The owner of the servient tenement is also obliged to permit the entry of an inspector or caretaker to examine the aqueduct, when the miner deems it proper.

Art. 188. The owner of a mine has the right to erect all such works as may be necessary to properly assure the enjoyment of the servitude of aqueduct; and also to prevent those that the owner of the servient tenement may wish to execute which might injure the servitude.

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<sup>1</sup>Art. 184. Similar to Art. 922 (1st part) of the Civil Code.

<sup>2</sup>Art. 185. Similar to Art. 922 (2d part) of the Civil Code.

<sup>3</sup>Arts. 186, 187. Cf. Art. 924, Civil Code.

Art. 189.<sup>1</sup> He who has an aqueduct in the estate of another has the right to increase the amount of water up to the quantity he needs for the working of his mine.

Art. 190. Whenever the waters flowing for the benefit of a miner impede or render difficult communication with the neighboring tenements or hinder irrigation or drainage, the miner must build the bridges, canals or other necessary works to avoid such inconvenience.

Art. 46, *Law 292 of 1875*. When it is necessary for the owner or owners of a mine, whatever be its class, to build ground sluices (*tongas*) or drainage or overflow canals in order to more easily exploit their mines, they can do so even beyond the boundaries of their own property, but they must not cause damage to a third party in possession of another nearby mine.

Art. 47, *Law 292 of 1875*. If, after the work spoken of in the preceding article be started, opposition is made by any of the owners of a nearby mine or mines, the Municipal Chief shall immediately go, accompanied by two experts, to inspect said work, and if the experts are of the opinion that damage may result, he shall cause the person constructing the ground sluice (*tonga*), or other similar work, to give security for the payment of the damages that, in the judgment of said experts or of others in their place, may result.

Art. 48, *Law 292 of 1875*. When, on the other hand, the ground sluice is beneficial to various mines, the expenses thereof shall be borne by the owners in proportion to the benefit derived, in the judgment of experts, by each one.

Art. 49, *Law 292 of 1875*. If one or more of the owners of the upper mines refuse to assume their proportional part

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<sup>1</sup>Art. 189. The miner must indemnify the landowner (Uribe, p. 228), though not expressly stated in M. C. as it is in Civil Code, Art. 928.

If the owner of the servient tenement already has an aqueduct he can probably prevent construction of another by offering passage of water over his own. Uribe, p. 230. Where M. C. is not specific, Civil Code applies. Uribe (p. 240, *et seq.*). Voluntary servitudes can be established, governed by Civil Code, and are not subject to M. C. Uribe, p. 241.

Both legal and voluntary must be by notarial deed (*escritura publica*) and registered *id.*

of the expenses, spoken in in the preceding article, they shall not be able to take advantage of the benefits of the works executed by others without paying, to the satisfaction of those who bore the cost, their share thereof as determined by experts.

The same shall apply to drainage or overflow effected by means of pumping or other similar machinery.<sup>1</sup>

These provisions extend to works already executed or in course of construction at the time of the sanction of this law.

### CHAPTER XIII.<sup>2</sup>

#### INDEMNITIES OBLIGATORY ON MINERS.

Art. 191. The owner of every mine which is being worked is obliged to pay to the owner of the land where it is situated, the amount of the damages caused by such work.

Art. 192. If the parties in interest do not agree upon the amount of the damages, it shall be fixed by experts named (one each) by them and a third by the judge.

Art. 193. In fixing such amount, the experts shall take into account all the damage suffered by the lands where the mine is situated, by reason either of the extent of land occupied by the buildings and works, or of the excavations made on its surface, or of the nature of such excavations, or of the number and course of the aqueducts therein constructed, or finally by reason of the crumbling (*desmoronos*) caused by such aqueducts, and of the other encumbrances burdening the servient tenement; but the full value of the lands occupied by the miner shall never be calculated and the miner held responsible for such full value as damages caused by the working of the mine.<sup>3</sup>

<sup>1</sup>Art. 49. The original text seems to have a misplaced comma.

<sup>2</sup>Chapter 13. In connection with this chapter see Uribe, *Servidumbres*. 3d part.

<sup>3</sup>Art. 193. The miner, therefore, never acquires title to the land; and upon abandonment of the mine the former absolute dominion of the land reverts to the owner of the surface. *Uribe: Servidumbres*, p. 218.

Art. 194. The indemnity due on account of a right of way, whether permanent or not, is the damage caused to the owner of the servient tenement by reason of such encumbrance. The amount thereof shall be fixed by experts named by the parties, in default of agreement between them.<sup>1</sup>

Art. 195. The value of the timber and other materials taken for the working of a mine, is not included in the damages spoken of in Article 191. Such value must be fixed and paid for in the way provided in Article 201.

Art. 196. The indemnity due in consequence of a servitude of aqueduct established over a neighboring tenement, is the damage suffered by said tenement as an immediate consequence of such servitude. The damages arising from accidental events (*de sucesos fortuitos*), such as landslides, shall be paid as such events occur.<sup>2</sup>

Art. 197. No miner shall be obliged to pay the amount of the damages caused by working a mine, spoken of in Articles 191 and 193, for periods less than six months; but as soon as the work begins, the owner of the land has the right to demand that the Municipal Chief oblige the miner to give security, to the satisfaction of said Chief, for the due payment of the amount of such damages.

If said security be not furnished, work on the mine shall be suspended.

Art. 198. Said term<sup>3</sup> having elapsed, the land owner can demand that the amount of the aforementioned damages be fixed, and said amount shall be paid not later than fifteen days after the appraisal is made.

Art. 199. The determination of what a miner must pay on account of a right of way, whether permanent or not, shall be made upon the demand of the owner of the land; but it must be borne in mind that rights of way created in the property where the mine is situated, are included in the appraisal

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<sup>1</sup>Art. 194. Curiously, no provision is expressly made for the appointment of a third, if the two fail to agree, as in Art. 192. But the Civil Code and Judicial Code apply.

<sup>2</sup>Art. 196. See note to Art. 203, *infra*.

<sup>3</sup>Art. 198. *I. e.*, six months (197).

(of damages) made conformably with Article 193. Payment shall be made immediately after the appraisal.

Art. 200. Before the experts make their appraisal, the parties must come to an understanding as to the class of servitude established, especially whether it be permanent or not. In case of discord as to this latter point, the word of the miner shall be taken; but he shall be obliged, if he deem it not permanent, to fix a term for its duration; and upon the expiration of such term, if he desire to continue making use of the servitude, he shall owe a new indemnity.

Article 201. The value of timber and other materials needed by the miner for working the mine, shall be fixed by experts, if necessary<sup>1</sup>, and shall be paid immediately after appraisal. The appraisal shall be made when the party in interest<sup>2</sup> demands it.

Art. 202. The determination of the amount of immediate damages caused by a servitude of aqueduct, shall be made when the party in interest<sup>2</sup> solicits it, provided the channel be completed. This determination shall be made by experts, if necessary<sup>1</sup>. Payment shall be made immediately after the appraisal or agreement.

Art. 203. The payment of damages caused by fortuitous events,<sup>3</sup> and which are imputable to an aqueduct, shall be made in the manner detailed in Articles 197 and 198.

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<sup>1</sup>Arts. 201, 202 a. *I. e.*, if the parties cannot agree on the damages.

<sup>2</sup>Arts. 201, 202 b. The use of the singular would seem to indicate that only the party whose property is taken can make the demand.

<sup>3</sup>Art. 203. The construction or operation of the aqueduct need be only a contributing, not the proximate cause, of the damages. See Uribe: *Servidumbres*, p. 229. The term "fortuitous event" in the civil law is about equivalent to the term "act of God" in the common law.



## CHAPTER XIV.

WATERS FOR MINES<sup>1</sup>.

Art. 204. He who gives the notice spoken of in Articles 8, 79, 346 and 367 acquires the right to take the water necessary for working a mine, under the terms detailed in the present chapter.

Art. 205. The discoverer of the first mine found in any locality has a preferential right, over all other subsequent discoverers, to take the water necessary in the judgment of experts for an ordinary installation, and for the persons thereof; and he can enforce this right at any time whatsoever, even though he has not worked the mine and even though, to make such right effective, it may be necessary to suspend work in an establishment installed on a mine discovered subsequently (to the first mine)<sup>2</sup>.

Art. 206. Other discoverers acquire a like right, subordinated to that of prior, and preferential to that of subsequent discoverers, in strict order in point of time. This right is always acquired by the act of giving the notice spoken of in Articles 80, 79, 346 and 367.

Art. 207. Every discoverer of a mine, in addition, has the right to actual occupancy<sup>3</sup> of the waters he wants, provided he does not affect the rights granted by the foregoing articles to those who have discovered mines before such occupancy of the waters, and provided he needs it for the working of his mines.

In this case, those who discover mines, after the actual occupancy of such waters, have no right to take them, except in case there is a surplus of water in the respective reservoirs.

Art. 208. In the user of the rights spoken of in the foregoing articles the owners of mines can never deprive the

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<sup>1</sup>Chapter 14. See Arts. 175, 176, *supra*. Uribe: Serv., p. 232, *et seq.*

<sup>2</sup>Art. 205. To give priority in water rights to discovery, without more, seems unwise and has been justly and severely criticized by Colombian writers. See Uribe,, *Servitudes*, pp. 233, 234, 235.

<sup>3</sup>Art. 207. E. g., by reservoirs.

owners of the land of the water necessary for their family, their livestock, and any sort of machinery whatsoever that they may have set up or started to set up, and for the irrigation of their planted lands.

Neither can such user impede the free enjoyment of the servitudes of aqueduct that are established over the land where the mine is situated, in favor of a town or settlement or an estate or machinery of a third party.

Art. 209. If there arise a dispute between mine-owners by reason of some claiming that there are surplus waters in any reservoir and others affirming the contrary, the doubt shall be resolved by means of experts named (one each) by the interested parties and the third by the judge.

Art. 210. If it be necessary to decide whether there be in a reservoir surplus water for an individual to take, that shall be deemed a surplus which remains after separating what belongs to the owners of mines of prior discovery pursuant to Articles 205, 206 and 207.

Art. 211. The right to the surplus of water granted by paragraph 2 of Article 207, cannot be impeded in any way by prior miners or industrials, not even under the pretext of further developing their original establishments.

Art. 212. Disputes arising over waters between miners and the owners of the lands or those enjoying any servitude of aqueduct, shall be adjusted in the way detailed in Article 209.

Art. 213. If a mine be discovered that cannot be worked except with water which is being used to work another, previously discovered, the new discoverer shall have the right to take such water, provided he fulfills the two following requisites, viz:

1st. That he conducts to the prior mine, at his own cost, other water sufficient for the working thereof; and

2d. That he indemnifies the owner of the prior mine for all damages suffered by him from the variation of the water, by reason either of the increased channel he has to maintain

or of the character of the land it traverses or finally of any other circumstances whatsoever.<sup>1</sup>

Art. 214. Waters, which are discharged from the establishments they serve and are not further needed by their owners, can be occupied by other miners in lower regions; but if the proprietor of the upper mine should subsequently need them for other establishments, either above or below the first, he can freely make use of them, provided he does so within the area of the mining claim granted by the denouncement.

Art. 215. In the case of the preceding article, if the owner of the upper establishment suspend the works of a mine, but preserve the ownership thereof, the miners of lower establishments can use the water he would have taken and conduct it by the same channel he would have constructed. They shall, however, first pay him the value, in the opinion of experts, of such user and are under the duty of maintaining, at their own expense, such channel in good condition. Nor do they thereby in any case acquire any right of property therein.

In this case, the owner of the upper mine is entitled, also, to indemnity from the owner of the lower mine for all damage that may result to him from the use of the channel and to security in advance for the payment of such indemnity, in the judgment of the judge of the place where the mine is situated.

Art. 216. The right to the waters is lost or is transferred with the right to the mines. Like the latter, the waters resume their character of common or public waters or pass to him who acquires the property in the mines, even though in the contracts this circumstance be not expressed, unless the vendor of a mine need the water for other mines belonging to him at the time of effecting the sale, and in the contract (of sale) of any of his mines expressly reserve<sup>2</sup> the water.

<sup>1</sup>Art. 213. *I. e.*, damage by increased cost of upkeep in general.

<sup>2</sup>Art. 216. That the reservation can only be made in favor of another mine or mines. (Uribe: Serv. Pred., p. 238.)

Art. 217. In case the proprietor of a mine changes the waters placed in his establishment for new waters, taken from a different source, the first waters thereby *ipso facto* are restored to their original character of common or public waters and are subject thereafter to the provisions of this chapter.

Art. 218. In case a mine remains deserted or abandoned, conformably to this law, any mine-proprietor can take, for another mining enterprise, the water that served the abandoned mine, provided that, in the judgment of experts, he needs it. The subsequent restoration of said (abandoned) mine does not cause the right to the waters, which used to serve it, to revive, unless such waters be unoccupied (*vacante*) at the time of the restoration or, later, at any time become so.

Art. 219. Those who acquire property rights in mines situated in higher levels than establishments already installed, can freely use the waters serving the latter, provided such waters are returned to the common channel above the place where the owners of the lower level establishments take them for their own service, and provided the use made of such waters by the owners of the upper establishments does not unfit them for use by the lower establishments.

Art. 220. The operator of higher level mines, who has acquired his property subsequently to the owner of lower level mines and has taken for working his mines, waters that after passing through his establishment flow over the lower property, thereby causing damage to the owner of said lower mines, can be obliged by the latter to conduct the aforesaid waters, by a special channel, to a point lower than that where the damage takes place.

Art. 221. If it be impossible to comply with the provisions of the preceding article, the operator of the higher level mines shall indemnify the operator of the lower mines for the damages the latter suffers. Such damages shall be appraised, if necessary, by experts.

Art. 222. The provisions of Chapters 12 and 13 shall apply in regard to the servitudes and indemnities to which waters used in mines, give rise.

## CHAPTER XV.

## WORKING MINES IN LITIGATION.

Art. 223. (Repealed by Art. 54, *Law 292 of 1875, Antioquia.*)

Art. 224. If litigation be commenced as to the possession and right of property of a mine actually being worked, and the parties do not agree in regard to such working, the owner of the plant already installed shall be preferred [to continue] such working.

Art. 225. If the mine is not being actually worked, and the parties are in disagreement in regard to working it, he who offers the better guarantees in regard to the following points, shall be preferred (to carry on) such working:

1st. Speedy installation of the better establishment.

2d. Exploitation of the mine, in accordance with good mining practice.

3d. In case of defeat in the suit, the return to the other party of the proceeds.

If the party who wins the suit is the one to whom the working (of the mine) was not given, he can acquire the plant installed, either by leaving to the operator the proceeds he may have obtained, or else by collecting such proceeds and paying the value, as appraised by experts, of the plant.

Art. 226. In the cases of the two preceding articles the party who is not in charge of the working of the mine is entitled to ask that the judge exercising jurisdiction in the litigation appoint an interventor<sup>1</sup> and the order to that effect must be made without delay.

Art. 227. If the litigation concern, not the whole mine,

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<sup>1</sup>Art. 226. The Standard Dictionary is authority for the use of the term "interventor" in the sense of an agent who inspects the operations at a mine and reports to the owners.

An interventor can only be appointed for a mine that is actually being worked. Decision of Superior Tribunal, Ibagué, 1891 (*Garavito*, No. 3355).

but only a part, the interventor shall be named for such part only.

Such interventor shall regulate his proceedings by the provisions of this chapter, as far as possible, and shall refer doubtful points that may arise to the judge of the cause for his decision.

But if the mine belong to an association<sup>1</sup> and the litigation, referring to one or more shares, be between two associates, or between an associate and a third party, the president of the association shall exercise the functions of interventor, unless he be a party to the suit, in which case an outside person shall be appointed, all without prejudice to the provisions of Article 228 and to (the duty of) the judge to resolve what may be proper, in doubtful cases.

Art. 228. Before the judge makes the appointment referred to in the preceding article and as soon as the corresponding petition is presented [for the appointment of an interventor], the judge shall urge the parties to designate within three days the person they wish named as interventor. If they do not reach an agreement within said term, the appointment shall be made freely by the judge.

Art. 229. Acceptance of the office of interventor of a mine is voluntary,<sup>2</sup> and any vacancy that may occur shall be filled as prescribed in the preceding article; but he who has accepted such office, cannot withdraw therefrom until his successor takes office.

Art. 230. The salary of the interventor shall be fixed by mutual agreement of the parties and the individual appointed. If they cannot agree, the salary shall be fixed by experts, named, one by the interventor and one by each of the parties or by the judge on behalf of any party failing to make a nomination.

Art. 231. The experts in fixing the salary, shall take into consideration the greater or less importance of the enterprise

<sup>1</sup>Art. 227. The term *sociedad*, here translated "association," includes all partnerships, joint stock companies and corporations: there is, accordingly, no exact equivalent in English. In regard especially to mining companies see *infra*, Chapter 16, Art. 247, *et seq.*

<sup>2</sup>Art. 229. In contradistinction to some offices under the Colombian law, acceptance whereof is obligatory.

established or that may be established, the locality where the mine is situated, the climate and other circumstances that may make the holding of such office more or less onerous.

Art. 232. The salary of the interventor shall be paid monthly, if he so demand, and shall be deducted provisionally from the proceeds, if any, of the mine; if there be no proceeds, it shall be paid by both parties to the suit; but upon final judgment in the suit, the party to whom the possession and property of the mine is awarded shall reimburse the defeated party for this expense, provided that the judgment does not declare the suit notoriously unfounded<sup>1</sup> (*de temeridad notoria*).

Art. 233. In the case of the preceding article, when the salary of the interventor should be paid by both litigants, the party who fails to contribute his quota, respectively, by the last day of the following month at the latest, shall, if the default be upon the part of the occupier and operator, lose the possession of the mine, or shall, if such default be on the part of the other party, leave the occupier and operator free to run the mine without any restriction whatsoever, until the suit as to the property of the mine be decided. The delinquent shall, however, be liable to the interventor for the accrued salary.

Art. 234. The functions and duties of the interventor are:

1st. To keep an exact account of the proceeds and current expenses of the mine;

2d. To take care as to the proper expenditure of the funds of the mine, so as to be able to verify in the accounts the amounts which, as expenses, have been actually expended;

3d. To keep an inventory of all the implements and other tools of the establishment on hand upon entering upon the performance of his duties, and another inventory of the implements and tools that may be acquired from time to time for the operation of the mine;

4th. To keep an account of the implements and other tools that may become totally worn out or rendered useless for working the mine;

<sup>1</sup>Art. 232. *I. e.*, if bringing the suit amounted to "abuse of process," to use the nearest common law equivalent.

5th. To take care and watch that the possessor or operator of the mine does not dispose of any of the products thereof, except after they have been weighed by the intervantor in the presence of the possessor of the mine and two competent witnesses;

6th. To close the accounts on the last day of each month and render a statement of the result thereof to the parties litigating the mine.

Art. 235. The intervantor is liable for failure to comply with his duties in the same terms as are public officers conformably to the Penal Code.<sup>1</sup>

Art. 236. The possessor of a mine for which an intervantor has been named, who impedes the intervantor in any way in the performance of his duties, shall incur the penalty established in Article 233.

Art. 237. The intervantor, in addition to the salary assigned to him conformably to this law, is entitled to (demand) that the possessor of the mine furnish him with lodging and necessary board for his maintenance there. The value of this expense shall be fixed by experts named by the judge, if the parties do not agree upon the amount, and shall be included in the expense account of the mine.

The intervantor can require that, in lieu of the aforesaid lodging and board or of the latter only, the value thereof (fixed in the aforesaid manner) be given to him.

Art. 238. The office of intervantor terminates:

1st. In the cases of Articles 233 and 236 of this law;

2d. With the termination, either by final judgment or settlement between the parties, of the suit which gave rise to his appointment. In both cases, the intervantor shall present to the judge of the cause a general account of the proceeds and expenses of the mine. Such account shall be given faith and credit for the purposes of this law. The parties may, however, agree to exempt the interventors from such duty.

3d. By agreement between the parties.

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<sup>1</sup>Art. 235. See Penal Code, Book II, Title 10, Art. 485, *et seq.*



Art. 239. The interventor can be removed:

1st. By agreement of the parties; and

2d. For misfeasance, provided any of the said parties makes due proof thereof, to the satisfaction of the judge of the cause.

Art. 240. The expenses of a mine in litigation, and in respect whereof an interventor has been appointed conformably to this law, shall be borne by the person or persons in possession and operation thereof. Such persons may dispose freely of its products as soon as the interventor has taken account thereof as provided in paragraph numbered 5th, Article 234 of this law, and provided they have previously furnished, to the satisfaction of the judge exercising jurisdiction in the suit, the corresponding security for the delivery of such proceeds to the contrary party in case the latter should win the suit.

Art. 241. If the security spoken of in the preceding article be not furnished, the interventor shall keep in his hands, as a deposit, the proceeds of the mine, leaving with the possessor thereof, only so much as is indispensable to meet the cost of operation.

Art. 242. If he who possesses and operates a mine in litigation be defeated in the suit, he shall be obliged to pay over to the party in whom the ownership of the mine is declared to be, the profits that it has produced in conformity with the account that it is the duty of the interventor to present; but he shall not be obliged to make such payment in the gold itself, but in an equivalent amount in metallic money, taking as a base the carat (*quilate*) of the gold of the litigated mine and the current market price thereof, as appraised by experts named by the judge.<sup>1</sup>

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<sup>1</sup>Art. 242. The legislators apparently had in mind only *gold* mines; but the same principle would undoubtedly apply to other mines, *i. e.*, the actual metal obtained need not be turned over to the winning party, but only its fair market value. Besides leaving many points in doubt, the system adopted in this and the following article for estimating the *mesne* profits seems crude and open to fraud and abuse, and I understand it is not often followed in practice. At the present time only paper money, not specie currency, is in use in Colombia.

Art. 243. In order that the provisions of the last part of the preceding article may be strictly complied with, the judge of the cause shall require from the possessor and operator of the mine the quantity of gold strictly necessary for an assay of its carat (*quilate*) at the State mint (*casa de moneda*). Such assay shall be made at the commencement of the suit, and at the expense of the party furnishing the gold. Such party shall first swear that the gold has been actually taken from the mine in litigation.

The assay having been made, the respective record of the proceedings shall be annexed to the papers in the case (*expediente*) and the gold shall be returned to the party who presented it.

Art. 244. If the individual not in possession of the mine gain the suit, he shall be obliged to reimburse the possessor for the expenses he has incurred insofar as they have not been compensated for by the products of the mine.

But he shall not be bound to (make) such payment, if, notwithstanding the favorable judgment obtained by him, he is willing to cede the mine to the party losing the suit.

Art. 245. The party who is not working the litigated mine has a right to demand that the work be carried on in an orderly and proper manner, in the judgment of experts, in order that the mine be conserved in good condition, and the judge of the district where the mine is situated must so order. From such order there shall be no appeal, except in the devolutive effect. [Appeal without a stay not depriving the lower court of jurisdiction.]

Art. 246. If the party working the mine refuse to carry on the work properly as determined by the experts and ordered by the judge, the contrary party has the right to demand the suspension of the work, and the judge shall so order promptly and summarily, without permitting delays prejudicial to the good condition in which the mine should be conserved.

## CHAPTER XVI.

COMPANIES OPERATING MINES.<sup>1</sup>

Art. 247. Associations (*sociedades*)<sup>2</sup> for the operation of mines can be of four classes: Collective [general partnership], *en comandita* [special or limited partnership], stock corporations (*anonimas*) and ordinary [mining] companies.

Art. 248. A *collective* association (*sociedad colectiva*) is that in which all the partners carry on the business personally or by an agent elected by mutual agreement [general partnership].

Art. 249. An association *en comandita* is that in which one or more of the partners are liable only to the extent of what they have contributed to the partnership [special or limited partnership].

Art. 250. An *anonymous* association is that in which the common capital is furnished by shareholders who are only liable for the amount of their shares, and which is not known by the name of any individual, but by the object for which

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<sup>1</sup>Chapter 16. Foreign companies must protocolize, *i. e.*, file and record in the proper notarial office, certified copies of their certificate of incorporation or articles of association and by-laws, publish abstracts thereof, and must have a resident agent in Colombia whose power of attorney must likewise be protocolized. See Legislative Decrees Nos. 2 and 37 of 1906.

It is always advisable, to avoid delay and expense, to execute all legal papers for use in Colombia in *Spanish*, and to send translation of all instruments that are executed in another language.

<sup>2</sup>Art. 247. The term "Sociedad," derived from the Latin, *societas*, includes any organized (as distinguished from mere joint or common ownership) association of individuals for carrying on property dealings, and the three classes, *colectiva*, *en comandita* and *anonima*, correspond closely to our general partnerships, special or limited partnerships, and the American stock corporations or English companies. The "entity" theory of partnerships has long been recognized in the Spanish and French laws. *Sociedades* are further divided into *mercantile* and *civil*, the former subject to the Commercial Codes, the latter or non-trading partnerships subject to the Civil Codes. In both of these codes, more accurate definitions will be found than those in the above text. In this chapter we are introduced to still a different species of association—the peculiar mining partnership. This has its analogy in the United States, where it has undoubtedly been much influenced by the old Mexican Law. See, 27 Cyclopaedia of Law and Procedure, 755.

the association is formed.<sup>1</sup> [Limited liability stock company.]

Art. 251. Ordinary [mining] companies are those ordinarily formed for working mines, without the requisites necessary for them to be considered as belonging to any of the preceding classes; they are governed by the special provisions of this chapter, notwithstanding that the Civil Code does not recognize their existence.<sup>2</sup>

Art. 252. The companies<sup>3</sup> spoken of in Articles 248, 249 and 250 shall be governed by the rules and by-laws which they have established or accepted; and in default thereof, by the provisions of Title 28, Book 4th of the Civil Code.<sup>4</sup>

Only in case of the insufficiency of such provisions shall the provisions of this chapter apply.

Art. 253. The provisions of the preceding article refer only to the internal government of the association, to its judicial or extra-judicial representation and to the rights and duties of the associates among themselves and in relation to the association.

Art. 254. The working of mines belonging to ordinary [mining] associations shall be carried on conformably to the stipulations stated [in writing]<sup>5</sup> by the associates in the respective agreements executed by them before undertaking work.

If a previous agreement be not executed, or, if made, be

<sup>1</sup>Art. 250. There is also a form of limited partnership, in which the special partners' interests are represented by shares (*Sociedad en comandita por acciones*), there having to be however one or more general partners, entrusted with the management of the firm business, and *liable* without limit. The Superior Tribunal of Medellin, 1903, has held that transfer of mining shares should be by *escritura publica* (notarial instrument) as being of an interest in realty, but this decision has been criticized (Garavito, No. 3374).

<sup>2</sup>Art. 251. Co-ownership as an ordinary mining company is presumed unless it be proven that an association of some other class has been formally organized. Superior Tribunal, Medellin, 1888 (Garavito, No. 3359).

<sup>3</sup>Art. 252. Note the use of the word "*compania*," company, also to include partnerships.

<sup>4</sup>Art. 252. The corresponding title in the National Civil Code is Title 27, Book IV. The Antioquia Code to which the text refers has not been in force since 1887.

<sup>5</sup>Art. 254. The agreements need not be by *escritura publica* (notarial instrument). Superior Tribunal, Medellin, 1893 (Garavito, No. 3365).

deficient, the rules stated in the present chapter shall be observed.

Art. 255. Every mine (held) in company shall be considered divided into twenty-four equal rights or shares which shall represent the votes to be counted at the deliberations of the association.

Art. 256. The resolutions of the association shall always be passed by absolute majority of votes. Cases in which there is a tie vote shall be decided by an arbitrator appointed by the judge of the highest rank (*de mas categoria*) in the place where the meeting of the association is held, or, if there be various judges of (equally) high rank (*de la mayor categoria*), by one of them. The judge shall appoint an intelligent and honorable miner, if the business requires a practical knowledge of mining.

To enable the judge to appoint an arbitrator, it is necessary that a copy of the minutes of the said meeting held by the association be presented to him; he shall make such appointment promptly and summarily without need of other procedure.

The provisions of the two preceding paragraphs do not disable the associates from terminating their differences by other means, provided the majority be in accord for such purpose.

Art. 257. (*As amended by Art. 29, Law 292 of 1875.*)

In every case the votes must be valued and counted according to the number of shares each associate possesses in the mine; so that if one or more [jointly] are owners of only one share, they shall have only one vote; if one have two shares, his vote shall count as two, and so of the rest.

Art. 258. Every associate, whatever be his share, shall have a voice in the deliberations of the association.

Art. 259. The associates can act as representatives<sup>1</sup> for one another; but one of them can never have half, or more, of the votes of those present at the meeting.

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<sup>1</sup>Art. 259. *I. e.*, act as proxies.

The associate who acts as representative for another, guarantees ratification by his principal.

Art. 260. (*Repealed by Art. 54, Law 292 of 1875.*)

Art. 261. Whenever the association resolves to undertake the working of the mine, notice of such resolution must be given to the associates who were not present at the session so that they may have knowledge of their duty to pay in due time their proportionate share (*contingente*).<sup>1</sup>

Art. 262. The notice spoken of in the preceding article can be given privately by any of the associates in the mine, or by means of the court upon petition of any of them.

Art. 263. If, in spite of the notice spoken of in the preceding article, some one of the associates does not pay in his proportionate share within the first five days of each month, the president or managing director (*director*) of the association can ask the judge of the place where the mine is situated, to issue an order (*intime la orden*) to the associate in default to pay in his proportionate share.

Art. 264. If the associate in default or some legal representative of his, be found at the place where the mine is situated, the corresponding notice shall be given to them; and if in spite thereof, the proportionate share be not paid within sixty days from said notice, said associate shall lose his right, in favor of the association.<sup>2</sup>

Art. 265. If said partner or any representative of his, be not found at the place of the situation of the mine, the notice shall be given to him by means of an edict posted in the public office, which shall be published in the official periodical and publicly cried on at least four business (*de concurso*) days.

In such case, the sixty days shall be counted from the date

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<sup>1</sup>Art. 261. Bullman in this and following sections translates "contingente" by "assessment," which well conveys the idea in the generality of cases, but might sometimes be misleading. In Art. 268, *infra*, I, too, have been compelled by the turn of the phrase to employ the word assessment. The English noun "contingent" would be correct but perhaps not readily intelligible.

<sup>2</sup>Art. 264. *I. e.*, the forfeiture accrues to the benefit of the company as a whole.

of publication of the edict in the official periodical, provided that before such day, the edict shall have been cried at least twice, otherwise, from the time the second proclamation be cried. The secretary<sup>1</sup> shall keep a record of the days on which such proclamations are cried.

Art. 266. If any of the associates delays payment of his proportionate share for more than thirty days, and wishes to pay it before losing his rights, he must pay in addition twenty-five per cent more than his proportion of the expenses, which additional amount shall be delivered to the associate or associates who may have borne the expenses in lieu of the associate in default.

Art. 267. The associations are not dissolved by the death of any of the associates; but in such event, the rights of the deceased associate cannot be lost, even though the proportionate share be not paid, as long as there is no legal representative of the decedent estate, and the proceedings detailed in Articles 263 to 265 have not been taken against such representative (when appointed).

Nor in this case shall the estate incur the penalty established in Article 266, but shall merely be obliged to pay its share of the expenses with simple interest at the rate of one per cent per month<sup>2</sup> for the period of delay.

Art. 268. Neither shall the shares in a mine of any individual, if attached for any reason whatsoever, be lost for failure to punctually pay the assessments,<sup>3</sup> but the future purchaser at the judicial sale of said shares, if he wish to preserve them, has to pay his proportional shares of the expenses, with simple interest at two per cent per month, for the whole term of the delay.

Art. 269. As soon as the mining shares referred to in the preceding article are sold by judicial process, any party in

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<sup>1</sup>Art. 265. The official analogous to our clerk of the court.

<sup>2</sup>Art. 267. It is scarcely necessary to point out that this is not an excessive rate of interest in Colombia even to-day. The legal rate of interest fixed by the Civil Code in the absence of express agreement, is 6%.

<sup>3</sup>Art. 268. See note to Art. 261, *supra*.

interest can ask the local judge to give notice to said purchaser to declare, within the term therein indicated for the purpose, whether or not he wishes to preserve his shares according to the provisions of said article; and if he does not make any such declaration in due time, he shall lose his shares.

Art. 270. When one or more shares of a mine are attached, the proceedings of attachment, receivership (*deposito*) and appraisal shall be confined to causing the respective shares to be appraised; giving notice to the president, managing director (*director*) or legal or lawful representative of the association not to deliver the proceeds except to the receiver (*depositario*) named; and to the appointment and due swearing in of said receiver.

Art. 271. In the case of the preceding article, the receiver is deemed subrogated to the associate, and by virtue thereof can exercise all the rights the latter had, and must comply with the duties corresponding to him.

But if the mine does not produce what is necessary for expenses, the sequestrated rights cannot thereby be lost, but the provisions of Articles 268 and 269 govern.

Art. 272. Whenever the working of a mine has been suspended and is [again] about to be continued, the provisions of Articles 261 to 266 shall be observed.

Art. 273. The rights of each associate are considered legally hypothecated for the payment of the expenses of the mine.<sup>1</sup>

Art. 274. If a mine in operation produce enough to meet expenses, and one of the associates does not contribute his proportionate share, the part of the proceeds corresponding to him can be disposed of to cover his proportionate share of the expenses, and as long as the proceeds of the mine are sufficient to cover the ordinary expenses thereof, he shall not incur the penalty spoken of in Articles 264 and 266.

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<sup>1</sup>Art. 273. Velez and Uribe point out that this is the only instance in Colombian law of a legal (in contradistinction to a conventional) hypothec or mortgage.



Art. 275. The associates can freely transfer<sup>1</sup> their rights (shares), but in case of sale, they must give immediate notice thereof to the association, with the object that, if it suits the association to redeem (*retraer*) the rights transferred, that is to say, to take them at a like price (*por el tanto*), it may do so within fifteen days; after the expiration whereof, any associate individually can take them for himself, and for that purpose he shall enjoy a further term of ten days, to be counted either from the expiration of the fifteen days that the association has to redeem them or from the day on which it declares that it does not avail itself of that right. Every sale made without the aforesaid requisite is null and of no effect.

*Law 292 of 1875*, Art. 32. The notice treated of in Article 275 of the Mining Code shall be given, upon petition of the seller, by any public official whatsoever exercising political or judicial jurisdiction. The respective record thereof shall be drawn up, and shall be signed by the person notified, the officer serving the notice, and the secretary.<sup>2</sup>

If the person to be notified is absent and his place of sojourn be known, the notice can be given to him by means of a requisition (*despacho ó exhorto*) issued to one of the authorities at his residence; and he shall have as a term for making use of his rights, the *term of the distance*,<sup>3</sup> in addition to that granted by the said article.

If his place of sojourn be unknown, the notice shall be given by an edict published in the official periodical. He shall be deemed legally notified at the expiration of two months from the date of publication.

Art. 276. When the redemption (*retracto*) is not made for account of the association, the associates who so desire may redeem in the proportion they agree upon.

If there be no [express] agreement, it shall be understood

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<sup>1</sup>Art. 275. An associate or co-owner can mortgage his share. Superior Tribunal, Medellin, 1888 (*Garavito*, No. 3361).

<sup>2</sup>Art. 32. *I. e.*, of the court or administrative office.

<sup>3</sup>"Term of the distance," see note to Art. 46, p. 33.

that the redemption is made in proportion to the respective [number of] shares of the redeemers.

If one associate alone redeems, he takes for himself all the shares sold.

Art. 277. If the association consists of only two associates, he who keeps his share can redeem that of his associate which is sold, within fifteen days counted from the day on which he had knowledge of the transfer.

Art. 278. Rights [shares] in mines, sold at public sale, can likewise be redeemed, the time [for redemption] being counted from the decree (*auto*) approving the auction proceedings; in such case there is no need to give notice to the association.

Art. 279. The nullity spoken of in Article 275 is cured by the fact of the association obtaining knowledge of the sale and not making use of the right of redemption within the terms in said article prescribed, which shall be counted from the time the association has knowledge of the transfer.

Art. 280. In any case where, for any reason whatsoever, the part belonging to each associate in a mine cannot be ascertained, the mine shall be deemed, until the truth can be ascertained, to be divided into as many equal parts as there are associates and each associate shall be reputed as owner of one of such parts.

Art. 281. If the association resolve not to undertake works in common for some time, and one or several of the associates wish to undertake work for his or their own account, the association cannot prevent it, provided that, in the judgment of experts, such works are not prejudicial to those which the association purposes to instal later. The products obtained belong to the associate or associates who have undertaken the works.

Art. 282. When a mine is easily susceptible of partition, so that each associate could undertake the working of his part, any associate whatsoever has the right to petition for partition, even though the majority of the association is opposed thereto.

*Law 38 of 1877*, Art. 8. When a mine is not easily susceptible of partition pursuant to Article 282 of the Mining Code, proceedings shall be taken in accordance with the provisions of Article 1390<sup>1</sup> of the Civil Code.

Art. 283. From the moment in which two or more persons agree to work a mine, the company or association should be formally organized if it be an ordinary [mining] association, at least by the appointment of a president or managing director thereof.

Art. 284. The president or managing director named in conformity with the provisions of the preceding article, is the legal representative of the association and binds it in its acts, both judicial and extrajudicial.<sup>2</sup>

In addition, the association can be represented by any person to whom such power is granted by its by-laws, and by the direct or substituted attorneys of the president or managing director.

Withal, any associate can act for himself in the matters in which the association is interested, and attention shall be paid to his demands, in so far as they are legal, as made by a proper party, although such party be not a necessary party to the suit, and there be no necessity to include such party for the progress and determination thereof.<sup>3</sup>

Art. 285. All acts done by an associate in maintaining the property and possession of a mine, accrue to the benefit of the remaining associates, although he may not have acted specially in their name and behalf.

Art. 286. When a mine has been abandoned, the associate whose duty it was to pay the tax, cannot take part in an

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<sup>1</sup>Art. 8, Law 38. Corresponding to Art. 1394 of the present national Civil Code, pursuant to which the property goes to the highest bidder, however, having the right to invite outside bidders; the price received is divided by the referee in partition (*partidor*) *pro rata* among the co-owners.

<sup>2</sup>Art. 284. The power of the President is held to be limited to lawful acts connected with the exploitation of the mine. Superior Tribunal, Medellin, 1895 (*Garavito*, No 5085).

<sup>3</sup>Art. 284. A partner cannot, unless the by-laws permit, represent the association, of his own initiative, in litigation. Superior Tribunal, Medellin, 1905 (*Garavito*, No. 5087).

association which denounces it anew, nor denounce it for himself.

If he *does* acquire rights as a denouncer or associate, such rights shall belong to his original associates in said mine.

Art. 287. The associate who does not contribute the amount necessary to maintain or preserve the mine in the manner and terms agreed upon loses his right in favor of those contributing therefor; the proceedings should be had in the manner prescribed by Articles 263 to 265.

To such case also the provision of Article 266 is applicable.

Article 288. When there is litigation between one or more associates against one or more other associates, or between one or more associates against the association, in regard to the ownership of a share or shares, the proceeds corresponding to such shares shall be deposited<sup>1</sup> until the suit in regard to the property thereof be decided, unless the parties unanimously stipulate otherwise.

If the mine give no profits, but on the contrary, it is necessary to incur expense, the expenses corresponding to the shares in litigation shall be borne prorata by those alleging title to them.

## CHAPTER XVII.

### POSSESSION.

Art. 289. Possession is the holding of a specific thing, with the intent [to possess it] as owner or master, whether the owner or he who passes himself as such holds the thing himself or through some other person who holds it in his place and name.<sup>2</sup>

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<sup>1</sup>Art. 288 *I. e.*, in the hands of a depositary or receiver designated by the court.

<sup>2</sup>Art. 289. This is the same definition as given in the Civil Code, Art. 762.

In regard to mines, for the purpose of constituting and maintaining possession, the payment of the tax is equivalent to the corporeal (*material*) holding of the mine.

Art. 290. Possession of mines may be regular, violent, clandestine and ordinary.

Art. 291. *Regular* possession is that which the owner of a patented<sup>1</sup> or titled mine has, who punctually pays the tax established in Chapter 11.

Art 292. *Violent* possession<sup>2</sup> is that acquired by force. The force may be *actual* or imminent.

It is *actual* when it intervenes directly or immediately in the act of acquiring possession.

It is *imminent* when, through fear of force, violent possession can be obtained without actual force.

Art. 293. He who, in the absence of the owner, usurps a mine, and upon the owner's return, repels him, is likewise a violent possessor.<sup>3</sup>

Art. 294. The defect (*vicio*)<sup>4</sup> arising from violence exists, whether the violence has been employed against the true owner of the mine, or against the possessor of it, although not an owner, or against him who held in the place and name of another.

It is the same whether the violence be employed by a person or by his agents, and whether it be employed with his consent or be afterwards ratified expressly or impliedly.

Art. 295. *Clandestine* possession<sup>5</sup> is that which is exercised by concealing it from those with a right to oppose it.

Art. 296. *Ordinary* possession is that which does not come under any of the preceding classes.

Art. 297.<sup>6</sup> Mere holding (*mera tenencia*) is the name given

<sup>1</sup>Art. 291. *I. e.*, one for which the Government has issued a patent or title as prescribed in Chapter 7, *supra*.

<sup>2</sup>Art. 292. *Possessio* obtained *vi* of the Roman law. This definition is identical with that of Art. 772, Civil Code.

<sup>3</sup>Art. 293. Similar to Art. 773, Civil Code.

<sup>4</sup>Art. 294. Similar to Art. 774, Civil Code. *Vicio*=vice of the Louisiana law. Roman law "*vitia*."

<sup>5</sup>Art. 295. *Possessio* obtained *clam*, of the Roman law. Same definition as in Art. 774 of Civil Code.

<sup>6</sup>Art. 297. A similar principle is found in Art. 775, Civil Code.

to that which is exercised over a mine not as owner, but in the place and name of the owner. A sequestrator and a usufructuary are mere holders of the mine sequestrated or the usufruct whereof belong to them.

The aforesaid applies generally to him who holds a mine, acknowledging another as owner.

Art. 298.<sup>1</sup> Mere lapse of time does not change mere holding into possession.

Art. 299.<sup>2</sup> Whether succession be by universal or by singular title, the possession of the successor begins with himself, unless he wishes to add that of his predecessor to his own, but in such case, he takes it with all its qualities and defects.

Possession by an uninterrupted series of predecessors can be added to one's own on like terms.

Art. 300.<sup>3</sup> Each one of the participants in a mine possessed in common, shall be deemed to have exclusively possessed the part that is assigned to him by the partition during all the time the undivided ownership lasted.

He may, therefore, add this time to that of his own exclusive possession, and the transfers he may have made, by himself alone, of the mine held in common and the real rights with which he has encumbered it, shall subsist as to such part if it have been included in the transfer or encumbrance. But if what was transferred or encumbered ex-

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<sup>1</sup>Art. 298. Same as Art. 777 of the Civil Code.

<sup>2</sup>Art. 299. Same as Art. 778 of the Civil Code. The Mining Code contains no provision as to the transfer of ownership or conveyance of title to mines. This is governed by the Civil Code, being effected by the same means as that of other immovable property (real estate) (C. C. Art. 673, *seq.*). The Roman law doctrine of *lesion* (*lesion enorme* in the Colombian law, for which a sale of immovables may be rescinded, is where the price is less than half the fair value of the property sold, or more than twice the fair value of the property purchased. C. C. 1946, 1947), it has been held, does not apply in general to a sale of mines, as such a contract is in a measure aleatory. Superior Tribunal, Bogotá, 1893 (*Garavito*, No. 3142). Nor, contrary to the rule of the Supreme Court for real estate in general, do the courts hold a contract or deed of sale of a mine void for failure to state the boundaries, if the property conveyed can be otherwise clearly identified. Superior Tribunal, Medellín, 1898 (*Garavito*, No. 3218).

<sup>3</sup>Art. 300. Similar to Art. 779 of the Civil Code.

tends to more, the transfer or encumbrance shall not be effective against the wish of the respective adjudicataries.<sup>1</sup>

Art. 301.<sup>2</sup> If possession was commenced in one's own name it is presumed that such possession has continued till the moment when it is set up.

If it is commenced in the name of another, likewise the continuance of such order of things is presumed.

If one proves possession at some prior time and is in present possession, his possession during the intermediate time is presumed.

Art 302.<sup>3</sup> Possession may be taken not only by him who is trying to acquire it by himself, but also by his agent or by his legal or lawful representatives.

## CHAPTER XVIII.

### MODE OF ACQUIRING AND LOSING POSSESSION.

Art. 303. Regular possession is acquired by the issuance of the title, and is preserved by the payment of the tax.<sup>4</sup>

Art. 304. Ordinary possession is acquired from the moment when the notice, spoken of in Articles 8, 79, 346 and 367, is given.

Art. 305. Ordinary possession of a mine is likewise acquired when an individual occupies it corporeally without violence or secrecy.<sup>5</sup>

Art. 306. Violent possession is acquired by the act of occupying the mine corporeally under the circumstances detailed in Articles 292, 293 and 294.

Art. 307. Clandestine possession is acquired when the

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<sup>1</sup>Art. 300. *I. e.*, those co-owners to whom the affected parts are adjudicated in the partition action.

<sup>2</sup>Art. 301. Similar to Art. 780, Civil Code.

<sup>3</sup>Art. 302. Same as Art. 781, Civil Code.

<sup>4</sup>Art. 303. *I. e.*, the annual tax, see Chap. 11.

<sup>5</sup>Art. 305. "*Nec vi nec clam*" of the Roman law.

mine is occupied corporeally, concealing the fact from him who could oppose such possession.

Art. 308. Over the same mine there may be possessions of various classes, even various possessors of the same class.

Art. 309. Regular possession is lost by the fact of failing to pay punctually the respective tax.

Art. 310. If a person loses the regular possession of a mine, but preserves the corporeal holding [thereof], he shall be considered an ordinary possessor.

Art. 311. If an ordinary possessor, to preserve his possession, has to employ any act of violence or to work clandestinely, such possession is converted into violent or clandestine possession as the case may be.

Art. 312. Ordinary possession, as well as violent or clandestine possession, is lost by the fact of abandoning the mine.

Art. 313. From the provision of the preceding article, there is excepted the possession acquired by the discoverer or restorer of a mine by the fact of giving the notice spoken of in Articles 8, 79, 346 and 367; which possession is not lost except in case the denouncement is not made and the other proceedings, enumerated in Article 118, taken, in their respective due times.

Art. 314. If any person takes possession of a mine in the place or name of another whose agent or legal representative he is, the possession of the principal or person represented begins with such act, even though it were without his knowledge.<sup>1</sup>

Art. 315. If he who takes possession in the name of another person, is not his agent or representative, such [other] person shall not gain possession except by virtue of his knowledge and acceptance;<sup>2</sup> but his possession shall date back to the moment in which it was taken in his name.

Art. 316. If the mine is acquired by inheritance, possession begins when said inheritance vests, although the heir

<sup>1</sup>Art. 314. Similar provision in Civil Code, Art. 782.

<sup>2</sup>Art. 315. *I. e.*, ratification, with, consequently, its retroactive effect. Similar provision in Civil Code, Art. 782, Par. 20.



does not know it; but if the inheritance be repudiated, he shall be deemed never to have possessed the mine.<sup>1</sup>

Art. 317. The possessor preserves possession, although he transfers the detention (*tenencia*) of the mine, giving it in lease, deposit, usufruct or other title, which does not transfer the ownership.<sup>2</sup>

Art. 318. He who holds a mine in the name of another and appropriates it, does not acquire possession; but if he alienates it the acquirer obtains an ordinary possession, provided he acts in good faith; there is a presumption of good faith.<sup>3</sup>

Art. 319. He who lawfully regains a lost possession, shall be deemed to have had it during all the intermediate time.<sup>4</sup>

## CHAPTER XIX.<sup>5</sup>

### POSSESSORY ACTIONS.

Art. 320. The object of possessory actions is to make effective or to preserve the possession of mines and of real rights constituted in favor of mines.<sup>6</sup>

Art. 321. Only he who has preserved possession from the time when he acquired it, or who at least has a title<sup>7</sup> and who proves payment of the tax in the preceding year, can institute a possessory action.

<sup>1</sup>Art. 316. Similar to Art. 783, Civil Code. As to when an inheritance is vested (*se defiere*), see Art. 1013, Civil Code: usually, it is upon the death of the deceased.

<sup>2</sup>Art. 317. Similar to Art. 786, Civil Code. A usufructuary of mines and quarries has, of course, the right to work them, but is liable for permanent injury caused by his fault. Civil Code, Art. 843.

<sup>3</sup>Art. 318. Compare Art. 791, Civil Code.

<sup>4</sup>Art. 319. Identical with Art. 792, Civil Code.

<sup>5</sup>Chap. XIX. The rules as to possessory actions for mines differ in some important respects from those for other real estate, as prescribed in the Civil Code, Book 2, Title 13, Art. 972, *et seq.*

<sup>6</sup>Art. 320. See Velez & Uribe's note, p. 94. Similar to Art. 972, Civil Code.

<sup>7</sup>Art. 321. *I. e.*, a patent or government grant.

Art. 322. The heir has and is subject to the same possessory actions as the person from whom he inherited would have and would be subject to, if living.<sup>1</sup>

Art. 323. The action to make possession effective can be brought only by regular possessors, against those who have acquired ordinary, violent or clandestine possession of their mine.<sup>2</sup>

Art. 324. The right of the regular possessor is always superior to that of any other possessor.

Art. 325. As between two or more regular possessors, preference shall be given to priority in time, computed according to the dates of the titles, pursuant to Article 93.

Art. 326. The action to make effective the possession of a mine does not prescribe as long as the regular possession thereof is preserved.<sup>3</sup>

Art. 327. Actions whose object is the preservation of possession of a mine prescribe at the end of one full year, counted from the act disturbing or obstructing possession.<sup>4</sup>

Art. 328. The possessor has the right to demand that his possession be not disturbed or obstructed, or that he be not despoiled of it, that he be indemnified for the injury he has received, and that he be secured against him whom he has reasonable cause to fear.<sup>5</sup>

Art. 329. A usufructuary has legal standing to exercise for himself the possessory actions and defenses, the purpose whereof is the preservation of the enjoyment of his respective rights, even against the owner himself. The owner is bound to help him against every outside disturber or usurper, if he be called upon for that purpose.<sup>6</sup>

Art. 330. Judgments obtained against the usufructuary bind the owner, unless the ownership of the estate or rights

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<sup>1</sup>Art. 322. Identical with Art. 975, Civil Code.

<sup>2</sup>Art. 323. For definition of these various classes of possession, see preceding Chap. 18, Arts. 291, *et seq.*

<sup>3</sup>Art. 326. *I. e.*, the right of any owner under government grant who continues to pay the taxes, is never barred by lapse of time.

<sup>4</sup>Art. 327. Similar to Art. 976, Civil Code.

<sup>5</sup>Art. 328. Identical with Art. 977, Civil Code.

<sup>6</sup>Arts. 329, 330. Same principles in Art. 977, Civil Code.

appurtenant thereto are in issue; in such case the judgment shall not avail against an owner who has not intervened in the suit.

Art. 331. Every one who has been despoiled by force, either of possession or of a mere detention (*mera tenencia*), shall be entitled to have things re-established to their former state,<sup>1</sup> without it being necessary, for this, to prove more than the violent eviction, nor can prior concealment or eviction be set up as an objection.

This right prescribes in six months.

Art. 332. Acts of violence shall, in addition, be punished with the penalties prescribed by the Penal Code.<sup>2</sup>

Art. 333. The regular possessor of a mine, and the discoverer and restorer who have not lost their rights, may demand that all new works, erection of which is attempted, that could hinder or prevent the working of the mine, be prohibited.<sup>3</sup>

But he shall not have the right to denounce with that object the works necessary to guard against the ruin of a building, aqueduct, waterway, bridge, etc., provided that the works that may incommode him<sup>3</sup> be confined to what is strictly necessary and that upon conclusion thereof, they be restored to their prior state, at the expense of the owner of the works.

Neither shall he have the right to hinder works conducive to the maintenance, in a proper state of cleanliness, of roads, ditches, water-pipes, etc.

Art. 334. New works can be denounced which, if constructed in the servient tenement, might hinder the enjoyment of a servitude constituted therein in favor of any mine whatsoever.<sup>4</sup>

Art. 335. He who fears that the collapse of a neighboring

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<sup>1</sup>Art. 331. *Statu quo ante*. Similar principle enunciated in Civil Code, Art. 984.

<sup>2</sup>Art. 332. See especially Penal Code, Sections 773 to 776, 900 to 903, inclusive.

<sup>3</sup>Art. 333. Similar principles in Civil Code, Art. 986.

(b) The plural for the singular in the Mining Code seems to be a misprint.

<sup>4</sup>Art. 334. Similar statement in Civil Code, Art. 987.

building may damage his mine, can apply for an order that the owner of such edifice raze it, if it be so deteriorated that it does not admit of being repaired, or, if it can be repaired, that he do so immediately; and if the defendant does not carry out the order in the time fixed by the judge, the building shall be razed or repaired at his expense.

If the injury feared from the building be not grave, it shall be sufficient that the defendant give bond to make good all damages that may supervene from the bad state of the building.<sup>1</sup>

Art. 336. In case the repairs spoken of in the preceding article be made by some one other than the defendant, he who attends to them shall preserve the form and dimensions of the old building in all its parts, unless it be necessary, to prevent the peril, to alter them.

The alterations shall conform to the wishes of the owner of the building as far as is compatible with the object of the complaint.<sup>2</sup>

Art. 337. If, after notice of the complaint has been served, the building falls owing to its bad condition, the owner, discoverer or restorer of the mine shall be indemnified for all damages; but if it fall because of an act of God (*caso fortuito*), such as a freshet, thunderbolt or earthquake, no ground for indemnity arises; unless it be proven that the act of God would not have caused it to fall had it not been for the bad state of the building.<sup>3</sup>

No ground for indemnity arises if notice of the complaint has not previously been served.

Art. 338. The preceding provisions extend to the peril feared from any class whatsoever of works or structure, or

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<sup>1</sup>Art. 335. This and the following articles do not properly belong under the classification of possessory actions; they provide for remedies somewhat analogous to our *mandatory injunctions*. Similar provisions are to be found in Civil Code, Art. 988.

<sup>2</sup>Art. 336. Similar provisions, Art. 989, Civil Code.

<sup>3</sup>Art. 337. Similar provisions, Arts. 990, 991, Civil Code.  
*Caso fortuito*. See note to Art. 203, *supra*.

from trees partly uprooted or liable to be thrown down by events of ordinary occurrence.<sup>1</sup>

Art. 339.<sup>2</sup> Whenever a work belonging to more than one person is to be prohibited, destroyed or improved, the denouncement or complaint may be brought against all jointly or against any one of them, but the indemnity which may lie for the damages received, shall be apportioned among all equally, without prejudice to the right of those upon whom such indemnity is imposed to divide it among themselves *pro rata* to the share each one has in the work.

And if the damages suffered or feared belong to more than one, each one shall have the right to make complaint or bring the suit for himself alone, in so far as it is directed to the prohibition, destruction or improvement of the work; but none can demand indemnity except for the damage he himself has suffered, unless he proves his legal authority to represent the others.

Art. 340.<sup>3</sup> The rights of action granted by this chapter for the recovery of damages for injury suffered prescribe at the end of one full year.

Those [actions] the object of which is to guard against an injury do not prescribe as long as there is just cause to fear it.

If those [actions] directed against a new work are not instituted within the year the defendants or parties complained against shall be protected in their interim possession, and the denouncer or plaintiff can only pursue his right by suit in the ordinary way.<sup>4</sup>

But even this last named action shall not lie when, according to the rules given in the Civil Code for servitudes, the right has prescribed.

<sup>1</sup>Art. 338. Similar provision, Art. 972, Civil Code.

<sup>2</sup>Art. 339. Similar provision, Art. 1003, Civil Code.

<sup>3</sup>Art. 340. Similar provisions, Art. 1007, Civil Code.

<sup>4</sup>Art. 340. *I. e.*, as distinguished from special proceedings by injunction.

## CHAPTER XX.

DESERTED OR ABANDONED MINES.<sup>1</sup>

Art. 341. The only mines that are deemed abandoned or deserted are those for which the tax spoken of in Chapter 11 is not paid, and that have been patented [titled] before this law goes into effect; and those in respect whereof the notice spoken of in Articles 8, 79, 346 and 367 has been given, provided the right has been lost conformably to the provisions of Chapter 9 and Articles 84 and 380.

The portions of mines abandoned by their owners in the cases of Articles 149 and 153 are also deemed deserted.

*Law 59 of 1909, Art. 4.* If the denouncer of a mine do not cause the proceedings for the furtherance of the denouncement to be taken within one year from the presentation of the denouncement, the mine shall be deemed abandoned. This provision also comprises mines denounced at the present time.

*Law 292 of 1875, Art. 39.* The part of a mine abandoned by its owner, pursuant to Articles 149 and 153 of the Code of Mines, upon becoming a deserted mine, cannot be denounced except as an abandoned mine, nor can it be computed as a part of the mine in which it was [formerly] included for the purposes of Article 366 or any other purpose.

Art. 342. A mine is not deemed abandoned when, having been so, its former owner regains his right, in the cases enumerated in Chapter 9. Neither is it deemed abandoned in the cases of Articles 350 and 351.

Art. 343. The abandonment of a mine renders it denounceable by another person in the terms and with the formalities detailed in Chapter 21.<sup>2</sup>

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<sup>1</sup>Chapter 20. There is no distinction between deserted (*desiertas*) and abandoned mines, the terms being used interchangeably. In the Colonial laws, a term commonly used, for the same idea, was *despoblada*—which has been preserved in some of the Spanish-American Codes.

<sup>2</sup>Art. 343. If an owner sell part of his mine and continue to pay the tax for the part retained, such part retained cannot be denounced as abandoned, even though the tax be not paid for the part sold. Superior Tribunal, Medellin, 1898 (Garavito, No. 3369).

Art. 344. The former owner of an abandoned mine preserves always in every case the property of the houses, machinery, furniture,<sup>1</sup> tools, etc., which were in the abandoned establishment.

Art. 345.<sup>2</sup> Mines which have not been denounced as abandoned up to the day in which this law goes into effect, cannot be denounced hereafter except in case the right to them is lost by non-payment of the respective tax, or by not taking in due time the proceedings relative to the acquisition of the Patent (title).

## CHAPTER XXI.

### DENOUNCEMENT OF ABANDONED MINES.<sup>3</sup>

Art. 346. The first thing that he who wishes to acquire an abandoned mine should do, is to present himself before the municipal chief of the District where it is situated<sup>4</sup> and give him notice that he wishes to acquire said mine and purposes to denounce it.

All the provisions of Articles 8 to 14 [inclusive] are applicable to such notice; it being understood that the records of new discoveries and of restorations are to be entered in the same book.

Art. 347. He who gives the notice spoken of in Articles 346 and 367 is the restorer of a mine.

<sup>1</sup>Art. 344. The same word "*muebles*," legally, means personal or rather movable property, but the context shows that it is used in its common, not its technical, meaning.

<sup>2</sup>Art. 345. This is one of the most important sections of the Code; by virtue of it, a title practically equivalent to a title in fee is granted, and under the present law, working a mine is unnecessary to preserve title. This has resulted in rendering unproductive, valuable prospects which the owners, either for lack of capital or of initiative, fail to develop and yet demand an exorbitant selling price. On the other hand, it is a decided inducement to capital. The same principle is laid down by Art. 139, *supra*.

<sup>3</sup>Chapter 21. This chapter also includes denouncement of *excesses* of mine, although not expressed in the title. See Arts. 366, *et seq.*

<sup>4</sup>Art. 346. When the mine is situated in various districts, notice can be given in any of them. Law 292 of 1875, Art. 1.

Art. 348. The restorer of a mine acquires over it the same rights as an original discoverer.

Such rights must give way to those of a former owner who has not abandoned the mine and to those of every prior restorer, but are preferred to those of any other persons whomsoever who subsequently wish to obtain the same mine.

Art. 349. The rights of the restorer of a mine are lost and are regained in the same way as those of a discoverer conformably to Chapter 9.

Art. 350. He who, having found a mine which he believes new, gives the notice spoken of in Article 8, may, upon its appearing to be [in fact] ancient, proceed with his denouncement in the form prescribed by this chapter and acquires a preferential right to the mine, as detailed in Article 348, from the time he gave said notice.

Art. 351. The provision of the preceding article is applicable even in case the document of denouncement has already been presented when the mine is discovered to be of ancient discovery, provided possession has not yet been given. In the latter case, a new document of denouncement shall be presented and the matter shall proceed conformably to the provisions of this chapter.

Art. 352. The restorer of a mine must present the document of denouncement within ninety days from the day on which the notice spoken of in Article 346 is given.

Art. 353. The document of denouncement, in addition to the statements required by Article 33, must express the name and surname, domicile and actual place of residence of the last possessor or possessors.

If any or all of such circumstances be unknown, that fact shall be clearly set forth in the document of denouncement.

*Law 292 of 1875*, Art. 51. No mine may be denounced as deserted or abandoned under any other name than that which it had at the time of abandonment, provided it be known by such name, and any person who does so denounce it shall lose for four years the right to denounce such mine.

Art. 354. There shall be annexed to the document of de-



nouncement a copy of the record entered conformably to the provisions of Article 346.

*Law 292 of 1875*, Art. 30. Denouncements of abandoned mines shall be published in the official periodical, and the Executive Power shall not proceed with them until after thirty days after publication.

Art. 355. The provisions of Articles 35 to 40, 42, 44 to 50 apply to the denouncement of restored or formerly discovered (*de antiguo descubrimiento*) mines.

Art. 356. In addition to the proceedings provided for in the preceding articles, the commissioner shall cause the last possessor of the mine to be cited personally; issuing, if necessary, the respective letters rogatory and commissions (*exhortos y despachos*).

Art. 357. A person cited personally can make opposition within the term of the distance<sup>1</sup> and twenty days more, even though the poster<sup>2</sup> be already taken down. Others can only do so within the term prescribed in Article 59.<sup>3</sup>

Art. 358. (*As amended by Art. 31 of Law 292 of 1875.*) If the denouncer does not know the name of the last possessor or if he is not found in the place of his domicile (*vecindad*) or of his last abode (*residencia*), he shall be notified by means of an edict which shall be posted in the office of the Commissioner and publicly cried on two market days (*días de concurso*).

Art. 359<sup>4</sup>. [The notification is deemed completed thirty days after the last of the proceedings spoken of in the preceding article have been taken; and within thirty days thereafter the person so notified can oppose the giving of possession.]

<sup>1</sup>Art. 357. See note, *supra.*, p. 33.

<sup>2</sup>Art. 357. Advertising the denouncement.

<sup>3</sup>Art. 357. *I. e.*, prior to the time when the poster is taken down.

<sup>4</sup>Art. 359. *Held*, impliedly repealed by Art. 31 of Law 292 of 1875, *supra.*

Resolution of the Department of Hacienda y Fomento Medellin, March 23, 1889, approved by the National Department of Fomento, September 16, 1889.

(Diario Oficial No. 7887-7888), Velez & Uribe, 184, *et seq.*

Art. 360.<sup>1</sup> If no opposition be made within the terms prescribed in the preceding articles, the giving of possession of the mine shall be proceeded with at the place where it has been restored.

For such possession, the provisions of Articles 51 to 58 shall be observed.

Art. 361. The provisions of Articles 60 to 69 are applicable to oppositions made to restorations of mines. However, in the case of Article 66 one alleging a preferential right based on a prior restoration may also make opposition.

Art. 362. The provisions of Chapter 7 shall be observed in respect to the patents [title deeds].

Art. 363. Notwithstanding the provisions of this chapter, as to citation of owners of mines denounced as abandoned, he who holds a title issued or revalidated conformably to this law and punctually pays the respective tax, shall not lose his rights on account of the possession given and title deed issued upon denouncement made by a person entitling himself restorer or discoverer of the mine; unless, the citation being served on him personally or on a legal or lawful representative, he does not wish to oppose, in which case he loses his right.

Art. 364. (*As amended by Art. 33 of Law 292 of 1875.*) If a mine be denounced as deserted or abandoned and its adjudication and the corresponding title be obtained, these shall be valid and efficacious even though it afterwards appear that it was of new discovery.

Art. 365. Whenever a mine, the enjoyment whereof is guaranteed by a patent (title deed), issued or revalidated conformably to this law, is denounced as deserted or abandoned, if the denouncer lose the suit originated by the owner's opposition, he shall be compelled to pay costs and to make compensation for damages; unless he prove a reasonable cause for the error, such as there being no record, in the respective revenue collection office, of the payment of the tax.

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<sup>1</sup>Art. 360. Semble, also impliedly repealed. See note to Art. 359.

## [DENOUNCEMENT OF EXCESS OF MINES.]

Art. 366. Every person who believes that there has been delivered to the discoverer of a mine a greater area than should have been granted to him (either on account of error in measurement or on account of the mine having been deemed to be in an entirely new lode (*cerro*), or to be a new mine in a known lode (*cerro*), without [in fact] belonging to such classes) has the right to reclaim for his own account the excess,<sup>1</sup> in the form detailed in the following articles, and without prejudice to the provisions of Articles 90 and 151.

An equal right is granted to every person to reclaim the excess he believes there may be in the area of a mine over that for which the tax is paid.

Art. 367. The first thing he [the denouncer of an excess] should do is to give notice in person, or by an agent,<sup>2</sup> to the Municipal Chief of the District, that he is going to ask for the adjudication of the excess which he believes there is. Such notice shall indicate clearly the mine referred to.

The corresponding record of such notice shall be entered in the book spoken of in Article 9, in the form detailed in Article 10 in so far as applicable to the case.

Art. 368. All the rights acquired by virtue of the notice spoken of in Article 8 are likewise acquired by virtue of that given pursuant to the provisions of Article 367, and the provisions relating to the records drawn up by virtue of the former are applicable to those drawn up under the latter. Nevertheless, no exploitation work (*obra de laboreo*) can be undertaken until possession of the excess that there may be has been given.

Art. 369. If the excess be because of a delivery of a greater number of claims (*pertenencias*) than duly belonged to a mine of its class, he who sets up such a claim shall institute

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<sup>1</sup>Art. 366. A part of a mine abandoned pursuant to Arts. 149 and 153 cannot be computed as part of the mine for the purpose of establishing an excess under this article. Art. 39, Law 292 of 1875, *supra*, p. 104.

<sup>2</sup>Art. 367. "*Recomendado*," i. e., no formal power of attorney is necessary.

within ninety days from the day he gave the notice, an ordinary suit against the owner of the mine to determine its true class; and if it appear from the judgment that in reality a greater number of claims (*pertenencias*) was delivered than duly belonged to it, the plaintiff shall have the right to those delivered in excess.

But no suit whatsoever may be instituted except in respect of mines hereafter adjudicated; since in respect of those patented before this law goes into effect, the provisions of Article 90<sup>1</sup> shall be observed.

Art. 370. If the judgment be favorable to the plaintiff, as soon as it is declared executory, the papers (*el expediente*) shall be transmitted to the Executive Power for the purpose of designating the commissioner to make the measurement and give the corresponding possession.

Art. 371. If the excess be imputable solely to an error in measurement, or in the calculation made by the party in interest for the payment of the tax, he who so claims does not have to institute any suit, but it shall be sufficient that he address a petition to the Executive Power complying in so far as possible with the requirements of Article 353, and annexing thereto a copy of the record spoken of in Article 367. He must make this petition within ninety days from the day on which he gave the notice.

Art. 372. The Executive Power, in the cases of the two preceding articles shall, if he deem the matter sufficiently well founded, appoint the commissioner to have the measurements taken and to give possession; such appointment shall be made as prescribed by Article 45.

He can furthermore, if he deem proper, annex to the papers (*expediente*)<sup>2</sup> received from the judge, the denouncement of the respective mine.

Art. 373. The commissioner upon receipt of the papers

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<sup>1</sup>Art. 369. See also Art. 4, Law 292 of 1875, *supra*, p. 46 (after Art. 90), and Art. 2, Law 38 of 1887, *supra*, p. 15 (after Art. 2), likewise preserving vested rights.

<sup>2</sup>Art. 372. *Expediente*. See note, p. 43.

shall make an order notifying the owner of the mine and the person claiming adjudication of the excess to appoint, each one, an expert to carry out the measurement.

If, by reason of the parties in interest not being found, these notifications cannot be made personally, the proceedings, shall be as provided in Articles 358 and 359;<sup>1</sup> and if they do not make the respective nominations<sup>2</sup> in due time, the commissioner shall do so together with that of the third [surveyor], the appointment of whom is always his province.

Art. 374. The survey of the mine must be made at the expense of the claimant to the excess, who must furnish for the purpose that which is expressed in Article 58.<sup>3</sup>

Art. 375.<sup>4</sup> (*As amended by Art. 34, Law 292 of 1875.*) The measurement of the mine shall be made taking as a base line that which was used to give possession to the discoverer. If such base line be not sufficiently clear, that which should have been fixed upon payment of the tax for the first year pursuant to Article 155, shall be taken. But if this [likewise] be not clearly determined, any of the end-lines (*extremos*), at the election of the possessor of the mine, shall be taken as a base line.

The measurement shall be made in such way that the area with which the mine is to remain, after separating the excess, remains included between the base line and a line parallel to it.

Art. 376. (*As amended by Art. 35, Law 292 of 1875.*) Immediately after the conclusion of the survey, delivery of the excess that appears shall be made, duly bounding it and setting landmarks, unless at such proceedings (*acto*) opposition is made by the possessor of the mine or by the owners of abutting mines, who must be previously cited; if opposition be made, then delivery shall be suspended and shall not be made except when and as the competent judge orders.

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<sup>1</sup>Art. 373. See notes to Arts. 358 and 359, *supra*.

<sup>2</sup>Art. 373. Of surveyors.

<sup>3</sup>Art. 374. *I. e.*, furnish transportation and living expenses and pay the fees.

<sup>4</sup>Art. 375. See also Art. 38, Law 292 of 1875, *infra*.

*Law 292 of 1875*, Art. 36. The respective provisions of Chapter 6 and provisions concordant therewith of the Code of Mines are applicable to the opposition made by the possessor of a mine the excess whereof has been denounced or by abutting owners.

*Law 292 of 1875*, Art. 38. When excess is denounced in a patented [titled] mine or in one already under legal possession, the owner whereof has abandoned the part contiguous to the line which served as base line for the survey taken for giving possession and issuing the title, the survey to be made for ascertaining the excess denounced shall not begin at such base line, but at the line parallel and near thereto which should have been fixed at the time of abandonment pursuant to Article 149, unless the possessor prefer that the parallel line at the opposite end be taken as a base (for the new survey).

Art. 377.<sup>2</sup> Opposition by the owners of abutting mines gives rise only to a suit to determine boundaries (*juicio de deslinde*) which shall be pursued conformably to the provisions of Chapter 23; but, in every case, delivery shall be made forthwith of the portion not claimed by such abutters.

Art. 378. The provisions of Article 56 are applicable to the present case;<sup>3</sup> the sixty-day term shall be counted from the date of the first order made by the commissioner.

Art. 379. Possession having been given of the excess of a mine in the cases of the preceding articles, and after the suit for determining boundaries has been carried into effect<sup>4</sup> the file of papers (*expediente*) shall be forwarded to the Executive Power, and, thereafter, the provisions of Article 71 and of the articles following it shall be observed.

Art. 380. If the interested party does not institute the proper suit or does not make the appropriate petition to the Executive Power within the ninety days prescribed in Articles 369 and 371, or if he does not appear to take possession or to

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<sup>2</sup>Art. 377. See Art. 36, *Law 292 of 1875, supra*.

<sup>3</sup>Art. 378. *I. e.*, to denouncements of an excess.

<sup>4</sup>Art. 379. *I. e.*, has been terminated and the judgment carried out.

solicit the patent [title deed] in due time, he loses all right to the excess claimed by him, and such excess can be solicited by any person whomsoever.

Art. 381. Mines for which patents [title deeds] are granted by virtue of the provisions of this chapter, shall enjoy the same guarantees granted by the law to duly patented mines of new discovery.

## CHAPTER XXII.

### ORDINARY SUITS CONCERNING MINES.<sup>1</sup>

Art. 382. Not only suits instituted directly with all the formalities of the usual ordinary suit, but also those in which possession and ownership are in question originating in oppositions made at the time proceedings for their acquisition are taken, are [classed as] ordinary suits concerning mines.

A suit to decide the better right to a mine conformably to Article 66, is also an ordinary suit.

Art. 383. Whenever possession of a mine is claimed in an ordinary suit, the ownership thereof [also] shall be deemed claimed, and, on the other hand, if the ownership is claimed, possession [also] shall be deemed claimed.

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<sup>1</sup>Chapter 22. See also Judicial Code, Book 2, Title 8, Chapter 8, Arts. 1384-1389, inclusive. When, as a result of opposition, the papers are remitted to the judge, he must order the denouncer to formulate his claim within three days. The order must be personally served (Art. 1384). If the denouncer default, upon petition of the opposer, the judge declares the denouncement abandoned and returns the papers to the executive authorities. The default can be opened, for cause shown, within forty days (1385). If the denouncer duly formulate his claim, a copy is served upon the opposer and the proceedings ensue as in an ordinary suit of greater import [\$300 or more] (1386). In the suit judgment for damages, as appraised by experts pursuant to Chapter 6, Title 88 of the Judicial Code, against the denouncer in favor of the owner of the land, for being deprived of the use of the land, is awarded (1387-1388). A copy of the judgment must be transmitted by the judge to the executive officer who had charge of the matter (1389). As the Judicial Code was adopted and went into effect, by Law 57 of 1887, after the Mining Code (adopted by Law 38 of the same year), the foregoing provisions of the Judicial Code are not repealed by the Mining Code, although *in practice* the Mining Code is followed. Rodriguez Piñeres: Código Judicial (1908 ed.), p. 246.

Art. 384. Ordinary and direct suits concerning the possession and ownership of mines or real rights constituted in favor thereof, shall be carried on, with the proceedings prescribed in the Judicial Code, by the judge designated in the following articles.

Art. 385. The judge of the circuit where the mine is situated alone has jurisdiction of suits concerning the possession and ownership thereof or concerning real rights constituted in favor thereof.

If the mine be situated in territory of more than one circuit, the judges of all the circuits are competent; but the one first exercising jurisdiction excludes the others.<sup>1</sup>

In cases where suits are consolidated, the proceedings shall be as in common suits pursuant to the Judicial Code.

Art. 386. If the mine be situated in more than one circuit the commissioner shall transmit the papers (*expediente*) to the judge selected by the opposers or by a majority thereof; or in case of a tie or in case no opposer manifests a choice, the papers shall be transmitted to the judge of that circuit which comprises the district where the commissioner resides.

In both cases the judge, to whom the papers should be re-mitted, shall try the suit.

If one or more oppositions are made before one or more of the judges of the circuits where the mine is situated, it shall be understood, for the purposes of the first paragraph of this article, that each one of such opposers desires the judge to whom they presented their oppositions to try the suit.

Art. 387. All oppositions made up to the day on which the poster should be taken down, shall be followed, as a single proceeding, before the judge who should, pursuant to the preceding article, try them.

Oppositions made at the time of giving possession and giving rise to an ordinary suit, shall also be consolidated, but only after the termination of any boundary suit arising out of oppositions, if any, therefor.

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<sup>1</sup>Art. 385. This whole clause "but.....others" is necessary to translate the single phrase "*con prevencion*."



Art. 388. If the judge receiving the papers (*expediente*) finds therein any grave informality, he shall return them for correction.

Art. 389. A copy of the record spoken of in Article 367<sup>1</sup> shall be annexed to a complaint instituted in conformity with the provisions of Article 369, and if it appear from such record that the ninety days within which the complaint should have been instituted have elapsed, such complaint shall not be admitted.

Art. 390. (*Original Article 390 repealed by Art. 54 of Law 292 of 1875 and replaced by Art. 53 thereof as follows:*

As a general rule the opposer must be the plaintiff (*actor*)<sup>2</sup> in the suit arising from the opposition.

The following cases are excepted:

1. When the opposer has an issued patent [title deed] or deed of ownership of the mine denounced.

2. When the opposer has a title, revalidated conformably with the Code of Mines.

3. When the opposer is the prior discoverer of the mine and makes proof thereof, either by means of a copy of the notice which he gave of the discovery or otherwise; and

4. When, at the time of the new denouncer's discovery, the opposer is in possession, given by a competent authority,<sup>3</sup> of the mine.

In all such cases proof shall be given, at least summarily, that the mine denounced comprises the whole or a part of the mine referred to in the opposition.

Art. 391. When it devolves upon the opposer to act as plaintiff the instrument wherein he formulates his opposition shall be considered as, and must comply with the requirements of, a complaint.<sup>4</sup>

Art. 392. If the opposition be formulated in due time, but

<sup>1</sup>Art. 389. *I. e.*, the record of the preliminary notice of denouncement of an excess.

<sup>2</sup>Art. 390. *I. e.*, has the initial burden of proof.

<sup>3</sup>Art. 390. *I. e.*, by a government officer or commissioner with jurisdiction.

<sup>4</sup>Art. 391. "Declaration" of the common law.

in such wise that some of the requirements of the law for a complaint are lacking therein, the judge shall give the opposer a reasonable time to correct the defect and shall indicate such defect; and if the defect be remedied, the suit shall be proceeded with; but if the defect be not remedied, the opposition shall be deemed as not formulated, and the provisions of Article 64 shall be complied with.

Art. 393. If the opposer does not have to assume the role of plaintiff (*actor*) in the suit, the instrument formulating the opposition shall not be considered as a complaint, but as a denial of the correctness and justice of the denouncement.

A copy of such instrument shall be given to the denouncer, who must formulate his complaint within six days [from service thereof].

Art. 394. If the complaint be not formulated in the time prescribed by the preceding article, the denouncement shall be deemed not made and completely without effect to benefit the maker thereof.

Art. 395. If the judge, in view of the proofs presented by the opposer, deems that the denouncer should be the plaintiff, he shall so declare; and if the instrument formulating the opposition complies with the requisites for a complaint, he shall treat it as a duly instituted complaint.

In case said instrument does not comply with the aforesaid requisites, the judge shall appoint a time within which to correct the defects he notes; and if such defects be not so corrected, he shall comply with the provisions of Article 64.

Art. 396. The complaint having been received, in any of the cases of the preceding articles, the defendant shall be notified and the suit shall be continued with the proceedings of ordinary process conformably to the Judicial Code.

Art. 397. When opposition is made by a person who is not the party in interest or his legal or lawful representative, he must, upon formulating the opposition, prove his legal authority [to act for the party in interest]; and if this be not possible, the judge shall require another undertaking to guarantee, conjointly with that required conformably to Article 62, that

the party in interest will approve whatsoever may be done in his name in the suit. Such undertaking shall be entered on the court records (*se extendera por diligencia*).<sup>1</sup>

Art. 398. If the opposition was made by a special attorney, appointed by means of a petition, such attorney thereby has authority to continue proceedings in the suit.<sup>2</sup>

Art. 399. If the judge thinks that the power of attorney referred to in the preceding article is not in due form, he shall require legal authority to be proven or the respective undertaking to be given pursuant to Article 397.

Art. 400. In case the power of attorney wherewith an opposition is formulated be rejected, the grantor of the power shall be personally notified of such order (*providencia*) [of rejection] and, if necessary for such notification, the respective letters rogatory (*exhortos*) or official commissions (*despachos*) shall be issued, at the expense of the person claiming to be attorney.

In such case the provisions of Article 64 shall not be complied with until there have elapsed, in addition to the time allowed to formulate the opposition, the term of the distance<sup>3</sup> and three days more, within which to revalidate the rejected power, to confer a new power, or to formulate in person the opposition.

Art. 401. Proof of payment of the tax shall be made in the manner detailed in Articles 165 to 173.

Art. 402. When a prior discoverer opposes the giving of possession, either before the poster is taken down or at the time of giving said possession and bases his opposition solely on the ground that if his mine be measured it will be found to comprise a part of that which is about to be given to the later discoverer, the proceedings shall be suspended until delivery has been made of what belongs to the first discoverer, and it will not be necessary to resort to a law suit.

<sup>1</sup>Art. 397. Bullman translates: "This must be done in writing on stamped paper."

<sup>2</sup>Art. 398. *I. e.*, an attorney in fact to make opposition has implied authority to act in the resulting litigation.

<sup>3</sup>Art. 400. See *supra*, p. 33.

But if the later discoverer insist that possession be given to him and offers to respect the rights of the first discoverer, although such rights may affect the rights to be granted to him [the later discoverer] in [temporary] possession, such possession shall be given to him, but such possession shall in nowise impede the [later] delivery of what belongs to the first discoverer. The latter may require that an undertaking, satisfactory to the judge, be furnished to restore to him the products that may be obtained from that portion of the mine which may be [later] definitely adjudicated to him and which was comprised in the first delivery of possession [to the later discoverer.]<sup>1</sup>

Art. 403. Notwithstanding the foregoing, if the parties are not perfectly in accord as to the preference to be given to the rights of the one over the other, the appropriate law suit shall be proceeded with, to adjust the controversy.

## CHAPTER XXIII.

### SUITS TO DETERMINE BOUNDARIES.

Art. 404. Suits to determine boundaries can arise by virtue of a direct complaint,<sup>2</sup> when the dividing line between two mines is doubtful and also in consequence of an opposition made by the owner of one mine to the possession about to be given to another.

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<sup>1</sup>Art. 402. This article, somewhat clumsily worded, would seem to refer to a case where the first discoverer, A, in a region, has not yet received possession at a time when a later discoverer, B, has his proceedings in shape to receive his possession. If there is any possible dispute, A can insist that his claim be surveyed, staked out and delivered to him, before delivery is made to B, further proceedings on whose part are meanwhile suspended, unless bonds be given, etc., as provided in the second paragraph of the article. It will have been noted in the previous chapter that owing to sundry possible delays, a discoverer long subsequent in time, may obtain delivery of his claim long before an earlier discoverer.

<sup>2</sup>Art. 404. *I. e.*, in the sense of the declaration or first pleading in an action.

Art. 405. The same judges who are competent to exercise jurisdiction in ordinary suits, pursuant to Articles 385 and 386, are competent in suits to determine boundaries.

Art. 406. Direct suits to determine boundaries shall be proceeded with in the manner prescribed in Title 17, book 2 of the Judicial Code.<sup>1</sup>

Art. 407. The provisions of Articles 390 to 395 are applicable to a suit to determine boundaries arising from an opposition.

Art. 408. In every case, the opposer, upon formulating the opposition, must exhibit his patent [title deed]. If it be not possible for him to do so by reason of the patent [title deed] being at some other place, he should ask for a short extension of time to obtain and present it.

If the said patent [title deed] be not presented in due time, the opposition shall be without effect and the delivery of possession of the mine shall be carried through to a conclusion.

Art. 409. When the opposer is to be considered as the plaintiff (*actor*) in the suit, the pleading formulating the opposition shall be considered as a complaint; and both in this case and in the case where the opposer is defendant, the suit shall be proceeded with within the periods prescribed in Articles 1259<sup>2</sup> *seq.* of the Judicial Code, it being understood that the discoverer or restorer of a mine does not have to present a title and that in the suit, the proceedings taken to give possession must be taken into account.

Art. 410. If the opposer claim that his mine extends to the boundary of another mine already adjudicated and patented and, in consequence, impugns any right whatsoever on the part of the discoverer, the owner or owners of the mines indicated as abutting shall be heard in the suit.

Art. 411. If any of the interested parties does not agree to the boundary proceedings, he can institute the corresponding

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<sup>1</sup>Art. 406. Corresponding to Book II, Title XI, Chapter 5, of the present Judicial Code.

<sup>2</sup>Art. 409. Corresponds to Art. 1307, *et seq.*, of the present Judicial Code.

ordinary suit in the manner determined in Article 1266<sup>1</sup> of the Judicial Code and wherein he will figure as plaintiff.

Art. 412. The dividing line between two mines is presumed to be that fixed in the boundary proceedings taken by virtue of the special suit which may have arisen; and such line cannot be altered by the judgment entered in the ordinary suit, except when one of the parties, whether plaintiff or defendant, fully establishes that said line should pass through certain determinate points, different from those indicated in the aforesaid boundary proceedings.

## CHAPTER XXIV.

### POSSESSORY SUITS.

Art. 413. Possessory suits are brief and summary and the circuit or district judges, according to the respective case, have jurisdiction thereof. Their object is to make effective or to preserve the possession of mines and of real rights constituted in their behalf.

Art. 414. The plaintiff must in every case annex proof that he has been in possession, in the form and for the time spoken of in Article 321.

Art. 415. Everyone who has the right to a mine by virtue of a title issued or revalidated in conformity with this law, has the right to ask of the judge of the circuit or of the district wherein it is situated, that he make effective the possession conceded and granted to him by law, by delivering actual physical possession of the mine to him.

Art. 416. In the petition presented for that purpose, there should be stated who is occupying the mine and who are the owners of the abutting mines.

Art. 417. Having been assured of the right of the claimant, the judge shall order delivery of the mine to be made to

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<sup>1</sup>Art. 411. Corresponds to Art. 1313 (amended by Law 105 of 1890, Art. 272) of the present Judicial Code.

him, after previously citing the interested parties and the abutters, who should have been indicated pursuant to the provisions of the preceding article.

Art. 418. If, upon delivery of the mine, the occupant thereof manifests that he is a regular possessor thereof, the judge shall grant him a reasonable extension of time for him to make proof of that fact and the proceedings shall meanwhile be suspended.

Art. 419. If the occupant of the mine prove, within the term set, that he is a regular possessor thereof and his title be prior to that of the plaintiff, the delivery of said mine shall not be carried out, nor shall an appeal be allowed to the plaintiff from the decision entered thereon except an appeal without a stay not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>1</sup>

Art. 420. If he<sup>2</sup> do not establish that he is a regular possessor, or if his title be subsequent to that of the plaintiff, the delivery shall be carried out and no appeal shall be allowed to the occupant except an appeal without a stay not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>1</sup>

Art. 421. The buildings, machinery, etc., etc., located at the mine shall be deemed to belong to the occupant, so long as no judicial decision to the contrary be had.

Art. 422. If the regular possessor desires to become the owner of said buildings, machinery, etc., the occupant is bound to grant them to him for the price fixed therefor by experts nominated, two by the parties and a third by the judge.

Art. 423. If the regular possessor do not wish to buy such buildings, machinery, etc., he may not commit *waste* therein

<sup>1</sup>Arts. 419, 420. *En el efecto devolutivo*. Appeals in the Spanish law, followed by the Colombian law, may be either *en el efecto suspensivo*, which *suspend* the proceedings until the determination of the appeal and deprive the inferior court of jurisdiction to proceed with the matter, or *en el efecto devolutivo*, which do not produce a stay nor suspend the jurisdiction of the lower court to proceed with the case or proceedings.

<sup>2</sup>Art. 420. *I. e.*, the occupant.

even though so doing might be of advantage to him in working the mine.

Art. 424. The ordinary possessor is always entitled to be paid for the edifices, tools, machinery, etc., in question, or to dispose of them at will.

The violent and the clandestine possessor must forfeit them to the benefit of the owner of the mine; but so long as this is not judicially decided, the prescriptions of the preceding articles shall be complied with.

Art. 425. If the regular possessor sue the occupant of a mine, to make effective the right granted him by paragraph 2 of the preceding article, he can ask that the taking away of the tools and the destruction of the machinery be enjoined, until an undertaking be given, to the satisfaction of the judge, to answer for their value or for the damages due to the deterioration and impairment.

This relief can be petitioned for in the act of proceeding to or consummating the delivery of the mine, and the judge shall so decree provisionally; but if the regular possessor do not institute his complaint within fifteen days, the prohibition shall *ipso facto* become insubsistent and the judge shall make effective the rights of the occupant; first obtaining information as to what has occurred, when he has no knowledge thereof.

Art. 426. In every case, upon delivery being made a detailed inventory shall be made of the buildings, machinery, tools, etc., and a record shall be made whether the occupant claims them.

Art. 427. When the plaintiff claims an injunction against disturbance or interference in the possession of any mine, he must annex to his petition summary proof of the disturbance or interference to which he is subjected.

Art. 428. The judges of the circuit and of the district where the mine is situated shall have concurrent jurisdiction of this suit,<sup>1</sup> the one first obtaining jurisdiction having the exclusive right thereover.

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<sup>1</sup>Art. 428. *I. e.*, of the suit in the case of Art. 427.



Art. 429. In the case to which the preceding article is limited the judge shall examine the proofs presented; and if he find the action well founded, without previous citation or hearing the defendant,<sup>1</sup> he shall enjoin upon the latter, within twenty-four hours, to abstain from thereafter violating the right of the plaintiff and that he furnish a bond to the satisfaction of the judge not to repeat the acts that constitute the disturbance.

Art. 430. This judgment shall be interlocutory and notice thereof shall be served personally; shall not bar the plaintiff from instituting the action of dominion or revindication or any other whatsoever that he may have; and shall be executed without stay by appeal. An appeal can only be granted without a stay, not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>2</sup>

Art. 431. The individual, upon whom the notice spoken of in the preceding article is served, can also demand the revocation of the decision within three days, and can annex to his petition the proof he deems proper or ask therein that such proofs be taken.

Art. 432. If revocation be obtained notice of the decision shall be given on the court-bulletins (*en los estrados*), and appeal therefrom can be had only without a stay and not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>3</sup>

Art. 433. When any one claims that possession of a mine should be restored to him on account of having been violently ejected therefrom, he must annex to his complaint proof of the ejection, of having been in possession or holding said mine at the time of ejection, and that no more than six months have elapsed since then.

Art. 434. The judges of the circuit or district where the mine is situate have concurrent jurisdiction over these suits; the one first obtaining jurisdiction having the exclusive right thereover.

<sup>1</sup>Art. 429. *I. e., ex parte.*

<sup>2</sup>Art. 430. See note to Arts. 419, 420.

<sup>3</sup>Art. 432. See note to Arts. 419, 420.

But if the ejection has been caused by a public official of the district, the judge of the circuit shall hear the suit; and if it has been caused by an official who has jurisdiction over more than one district, by the Superior Court.

Art. 435. Violent ejection cannot be said to have taken place, except in the case where an individual acquires the violent possession of a mine.

Art. 436. The judge before whom a complaint for ejection be laid, shall, without citing or hearing the ejector, examine the proofs accompanying the complaint, and if it appear therefrom that the plaintiff has the right of action instituted, pursuant to the preceding articles and to Article 331, within twenty-four hours he shall order the ejected person restituted in his possession.

Art. 437. The order granted as provided in the preceding article is not appealable except without a stay (*en el efecto devolutivo*),<sup>1</sup> but revocation of it can be asked<sup>2</sup> within three days after the restitution, and if it be obtained, matters shall be restored to the *statu quo ante*, and no appeal shall be granted to the plaintiff in the action except an appeal without stay not depriving the lower court of jurisdiction<sup>1</sup> (*en el efecto devolutivo*).

Art. 438. Violent ejection is not said to be caused by the authorities, except when a public officer ejects an individual from the possession or holding of a thing without a prior hearing, without granting him a full appeal (*en ambos efectos*)<sup>3</sup> to his Superior, and without some legal warrant for such ejectment.

For such ejectment to be deemed violent, it is not necessary that force be directly or immediately employed, it is sufficient that the order of the officer cannot be complied with without abandoning the thing.

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<sup>1</sup>Art. 437. See note to Arts. 419, 420.

<sup>2</sup>Art. 437. From the judge granting it.

<sup>3</sup>Art. 438. See note to Arts. 419, 420. The appeal is said to be in both effects, because it suspends the proceedings below (*efecto suspensivo*) and jurisdiction of the cause devolves (*efecto devolutivo*) upon the upper court or, as in this article, administrative officer.

Art. 439. In case of violent ejection, caused by the public authorities, the ejection must be proved by a complete copy of the record, made at the cost of the interested party. The judge to whom application is made for restitution, shall demand a report from the officer who caused the ejection, setting him a peremptory term in which to send it and it shall always be the duty of the officer to give it.

Art. 440. If it be proven, in the manner provided in the preceding article and by such other proofs as the interested party chooses to exhibit, that there has been an [unlawful] ejection, and provided it appear that not more than six months have elapsed, restitution shall be ordered and shall be carried into effect immediately, no appeal being granted except an appeal without stay not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>1</sup>

Art. 441. The summary proof spoken of in the preceding articles shall consist of the titles of the mines, the deeds or documents evidencing the contracts made as to them, and examinations of witnesses; the witnesses may be examined *ex parte*, but must be vouched for by the judge, if he knows them, or if not, by other witnesses who are vouched for by the judge.

Art. 442. The complaint for recovery of damages caused by the disturbance of or ejection from possession, shall be instituted and prosecuted before the judge having jurisdiction according to the amount involved, and by the procedure of an ordinary suit.

Art. 443. In the summary possessory suits treated of in this chapter, the demolition of the works that may exist in the mines to which such suits refer, shall not be permitted, until those who consider themselves entitled thereto are defeated in the suit for the property (*juicio de propiedad*), in which suit determination shall be made as to what should be done in regard to such works.

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<sup>1</sup>Art. 440. See note to Arts. 419, 420.

Art. 444. Possessory suits as to denouncements<sup>1</sup> of a new or old work, as well as those of redemption (*retracto*)<sup>2</sup> shall be proceeded with in the manner detailed in Articles 19, 20 and 21 of the Judicial code,<sup>1</sup> with the following advertences, however:

1st. The references made to the Civil Code shall be deemed to be made to this law. The reference made by Article 1310<sup>3</sup> of the Judicial Code to Article 1014 of the Civil Code shall be deemed made to Article 336 of this law.

2d. The term spoken of in Article 1290<sup>4</sup> of the said Judicial Code within which to formulate a complaint, shall be that of the distance, if any, and three days more.

3d. There shall be deemed to be added to Article 1294<sup>5</sup> the following paragraph: But if the continuation of the work impede or notably make difficult the working of the mine, in the opinion of experts, it cannot be continued until the respective suit be terminated.

4th. In the case of Article 1295<sup>6</sup> of said Code, the judge is responsible only for the then solvency of the surety; and solvency shall be deemed proven, if it be shown that the surety was generally believed to be solvent in the neighborhood.

5th. All suits for redemption (*retracto*) instituted by virtue of the alienation of a mine, shall be consolidated and shall be heard by the judges with jurisdiction over ordinary suits as to possession and property of mines. If there be various suits instituted before diverse judges they shall be consolidated and tried before him who took jurisdiction of the first, the procedure detailed in Chapter 3, Title 3d, Book 2, of the Judicial Code<sup>7</sup> being observed.

<sup>1</sup>Art. 444. In regard to denouncements of old and new works (as to which see Art. 333, *et seq.*), Chapters 7 and 8, Title 11, Book 2, of the present Judicial Code correspond to the Titles 19 and 20 cited above; the present Judicial Code contains no special procedure for redemption suits.

<sup>2</sup>Art. 444. *I. e.*, the redemption referred to in Arts. 275 to 279.

<sup>3</sup>Art. 444. To the Art. 1310 cited, corresponds Art. 1357 of the present Judicial Code, which does not make any reference to any article of the Civil Code.

<sup>4</sup>Art. 444. See Art. 1344 of the present Judicial Code, which perhaps changes the procedure of the Art. 1290 cited.

<sup>5</sup>Art. 444. Corresponds to Art. 1345 of the present Judicial Code.

<sup>6</sup>Art. 444. Corresponds to Art. 1347 of the present Judicial Code.

<sup>7</sup>Art. 444. Corresponds to Chapter 4, Title 3, Book 2, of the present Judicial Code entitled "Consolidation of Proceedings" (*Acumulacion de autos*).

## CHAPTER XXV.

## SPECIAL SUITS.

Art. 445. Rights emanating from the existence of a suit, such as those resulting from the provisions of Articles 224, 225, 226, 230, 234, 240, 241 and other similar provisions, shall be enforced by means of an incidental proceeding heard and tried (*articulacion sustanciada*)<sup>1</sup> as provided in Article 458<sup>2</sup> of the Judicial Code.

But if there be facts to be proven, the judge may allow proofs to be taken in the incidental proceeding for a period not exceeding ten days, but which can be extended for the taking of proofs when any of them have to be obtained outside of the place of the suit. This extension shall not exceed twice the *term of the distance*.<sup>3</sup>

In every case the judge can cause such proceedings to be had and demand such explanations from the parties as he deems proper, to assure his decision.

This incidental proceeding (*articulacion*)<sup>1</sup> can be instituted by a party in interest, although he be not a party to the suit.

Art. 446. In the cases in which there are contrary claims relative to points which should be decided by experts, as in the cases of Articles 209 and 212, of the indemnities treated of in Chapter 13 and in others similar, the following [rules] shall be observed:

The party in interest shall present to the judge of the district a written statement in which he enumerates the rights he believes he has and specifies the person who disputes them.

The judge shall cause the defendant to appear, and shall demand of him that within the term he sets for him (which shall not exceed three days) he shall manifest in what matters he is in agreement with the plaintiff and in what matters,

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<sup>1</sup>Art. 445. An *articulacion* is an incidental or interlocutory issue arising in a suit.

<sup>2</sup>Art. 445. In lieu of the Art. 458 cited, Arts. 505 and 742 of the present Judicial Code should be consulted.

<sup>3</sup>Art. 445. See note to Art. 46, p. 33, *supra*.

not. If no manifestation whatever be made the statement of the plaintiff shall be deemed true.

Art. 446. If there be facts which the judge deem proper to investigate, proofs can be taken, observing the provisions of the preceding article.

The proceedings specified in the preceding paragraphs [of this article] having been had, if the judge think there are data sufficient for the experts to fulfill their mission, he shall order that the parties nominate their respective experts within twenty-four hours; and upon their acceptance and taking oath of office, he shall deliver to them the papers setting them a reasonable term in his discretion for them to despatch the matter.

The decisions of the experts, in the matters which they have to resolve, shall be put into execution without any appeal; and for their execution, the provisions of Title 13, Book 2d, of the Judicial Code shall be observed.<sup>1</sup>

Art. 447. The resolutions dictated by the judge pursuant to the preceding article are not appealable except by an appeal without stay, not depriving the lower court of jurisdiction (*en el efecto devolutivo*);<sup>2</sup> but those the object of which is to execute the resolution of the experts shall follow the rules of said Title 13.<sup>3</sup>

Art. 448. If the judge think that the experts cannot perform their duties for lack of the necessary data; or if, treating of indemnities, the parties should not be in accord as to what is to be appraised, he shall order each party to name within 24 hours an arbitrator who, with the third that he names, shall decide what should be done, that is to say, the quality or quantity of the things that should be appraised.

Acceptance of this office is compulsory<sup>4</sup> and is not incompatible with that of expert; both these offices may be filled at the same time by the same person.

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<sup>1</sup>Art. 446. Replaced by Chapter 1, Title XI, Book 2, of the present Judicial Code.

<sup>2</sup>Art. 447. See note to Arts. 419, 420.

<sup>3</sup>Art. 447. See note to Art. 446.

<sup>4</sup>Art. 448. Compare Art. 229, *supra*.

The decision of the arbitrators cannot be called in question by the parties.

The point having been decided by the arbitrators, the matter shall be proceeded with as provided in Article 446, for the appointment of experts and other proceedings.

The judge should set a term to the arbitrators within which they must perform their duty, and should, if necessary, compel them to do so with such compulsion as he can impose.<sup>1</sup>

Art. 449. In the cases in which the issue is the enforcement of rights granted to an individual over certain specified estates, as in the cases of Articles 181, 245 and 246, the proceedings shall be as indicated in Articles 427 *seq.*, in so far as applicable.

Art. 450. When matters such as the matters of Articles 208, 240 and others similar, are in question that should be decided by the judge summarily, and that cannot be assimilated to those treated of in the preceding article, there shall be presented to the judge a petition accompanied with the proofs that are deemed necessary.

The judge shall examine the petition and if he deem the facts clearly established he shall render the appropriate decision within four days.

If he believe that some proofs are lacking; he shall so declare, specifying them, and shall fix a reasonable term, not to exceed eight days, plus twice the traveling time if proofs have to be taken at another place, and upon the proofs that may be obtained he shall decide what is proper within four days.

From these decisions there is no appeal except an appeal without stay not depriving the lower court of jurisdiction (*en el efecto devolutivo*).<sup>2</sup>

<sup>1</sup>Art. 448. *e. g.*, by contempt proceedings.

<sup>2</sup>Art. 450. See note to Arts. 419, 420.

## CHAPTER XXVI.

## MISCELLANEOUS PROVISIONS.

Art. 451. He who gives to a miner any sum to equip a mine shall have priority over all the other creditors to have such sum and interest thereon paid out of the products and out of the value (*valor*) of the mine.

If there be divers creditors [of this character], their claims shall be paid *pro rata*.

The foregoing paragraphs notwithstanding, amounts owing for wages of the overseers (*mayordomos*) and laborers of the mine, shall be paid preferentially to the debts therein mentioned.

And if there be in addition to the claims spoken of in this article claims of the first class mentioned in Article 2574<sup>1</sup> of the Civil Code, the provisions of Article 2578<sup>2</sup> of said Code shall be observed; for which purpose, those herein treated of are deemed of the second class.

But the value of a mine and of its products shall not be disposed of to pay debts of the first class in competition with those of the second class, except when all other property of the debtor is completely exhausted.

Art. 452. The Municipal Chief of each district is under the strict duty of causing every proceeding<sup>3</sup> entered in the book spoken of in Article 9, to be published by public cry on the four succeeding market (*de concurso*) days to that in which it was inscribed. A record of such publication shall be made on the margin of the respective minute of the proceedings.

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<sup>1</sup>Art. 451. Art. 2495 of the present Civil Code.

<sup>2</sup>Art. 451. Art. 2495 of the present Civil Code. The second class of claims provided for by the Civil Code are the liens of the innkeeper, carrier and pledgee; the mining Code adds another lien as above. These are first liens, unless the other property of the debtor is insufficient to pay claims of the first class (court costs incurred on behalf of the general interests of creditors, funeral expenses and expenses of last illness of a decedent, salaries of clerks and servants and necessary articles of subsistence furnished the debtor and family for three months past, and taxes) in which case the deficit has to be met out of the property covered by the lien, before the lien creditor is paid.

<sup>3</sup>Art. 452. *I. e.*, notice of discovery, etc.



Art. 453.<sup>1</sup> The ownership of quartz (*de filon*) or alluvial mines, is acquired and is preserved conformably to the provisions of this law, although they be not gold mines. Sedimentary mines cannot be acquired and preserved except by virtue of special concessions emanating from the State legislature.

Mines which are the property of the owner of the soil can be exploited by him, without other requirement or burden than compliance with the provisions that may be imposed by the authorities for the public safety and health.

Art. 454. When a vein mine (*de veta*) is denounced, that is comprised wholly or in part within the boundaries of another of placer gold, the former cannot be worked except in so far as it is possible so to do without causing damage to the establishments already installed in the latter at the time of the discovery.

The difficulties which may arise in regard to the subsequent working of both mines shall be decided by three arbitrators named one by the owner of each mine and the third by the judge.

The same is applicable to the mines of placer gold<sup>2</sup> which may be denounced and comprised, wholly or partly, within the boundaries of another vein mine in part.

Art. 455. In all suits in regard to mines the prescribed terms can be rescinded [defaults can be opened], provided the circumstances specified in Article 47<sup>3</sup> be proven.

Art. 456. Rights granted by this law and for which no special proceedings have been specified, shall be enforced by means of an ordinary suit.

The right granted by Article 47 to call in question the assertion that there was a lawful obstacle to delivering the

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<sup>1</sup>Art. 453. See Art. 2, Law 38 of 1887 (after Art. 2 of the Code, p. 15, *supra*), and Art. 7, Law 21 of 1907 (after Art. 2 of the Code, p. 16, *supra*).

<sup>2</sup>Art. 454. This is of interest (in view of Art. 52 of Law 292 of 1875, *infra*, which prohibits the denouncement of alluvial mines within the bounds of quartz mines) only in regard to mines of earlier date than 1875.

<sup>3</sup>Art. 455. *I. e.*, serious illness, force or violences, and (for one day) sudden and pressing occupation of necessity.

roll of papers to the commissioner, can be enforced by a direct suit instituted prior to the giving of possession, and also by means of an opposition made within the legal term.

Art. 457. Acceptance of the office of expert to be filled by virtue of the provisions of this law, is compulsory upon the residents of the district in which the nomination is made and the nominees can only excuse themselves on the same grounds which serve as exemption from public offices of compulsory acceptance.

Art. 458. It is obligatory upon the parties interested in the appointment of experts, to furnish to these the mounts and provisions necessary for transportation to the locality of the mine, when the performance of the duties of such office is to take place away from the county seat of the district. In such case likewise they are entitled to a fee of one *peso* a day for each day spent in the proceedings, without prejudice to the provisions of Article 58.

## CHAPTER XXVII.

### FINAL PROVISIONS.

Art. 459. This law shall go into effect in the State<sup>1</sup> on January 1, 1868, and from that day the law of October 3, 1864, on Mines, shall be repealed.

Consequently, controversies and suits in regard to acts done, rights acquired and obligations contracted from and after said day, relative to the said subject, shall be decided according to the provisions of this law; but controversies and suits regarding acts, rights and obligations prior to the aforesaid dates, shall be decided according to the laws in force when the act was done, the right acquired or the obligation contracted, without prejudice to the application to the cases

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<sup>1</sup>Art. 459. The State of Antioquia. It was adopted for the entire Nation by Law 38 of 1887 (March 15th) and went into effect in the following months; the precise dates vary for different localities. See Art. 12 of Civil Code, 1887.

that may present themselves of the provisions of the present law that are purely of adjective law or procedure, from the day it goes into effect.

Art. 460. The matters in which there may have been oppositions at the time this law goes into effect and wherein the opposition has been formulated, shall proceed pursuant to the usual rules, and the provisions of Chapter 22 of this law shall not cause any change whatsoever in the procedure in regard thereto. But if no decree has yet been entered into in regard to the formulation of the opposition and such opposition falls under the case of Article 392, the procedure provided therein shall be followed.

Matters in which the opposition has not yet been formulated remain subject to the provisions of Chapter 22.

In these matters in which the commission of the Executive Power to give possession has been received, and the preparatory proceedings are being taken, the instructions of the Executive Power shall continue to be observed and the possessory proceedings shall be taken with the formalities prescribed in Chapter 5 as it may be possible to observe.

Art. 461. In the month of December next<sup>1</sup> possession of no mine shall be given, but the preparatory proceedings of such possession may be taken and possession shall be given immediately after this law goes into effect, and the provisions of Chapter 5, in so far as possible, shall be observed.

If possession of any mine be given in said month, it will be necessary to repeat such proceeding and to observe the formalities provided for in the aforesaid Chapter 5 in so far as possible.

Art. 462. The commission which may be appointed or contracted for by the Executive Power for the drafting of a new code of mines, if the Executive Power deem fit to make use of the authorization conferred by Law 92 in regard to the drafting of Codes, shall take the present law as the basis for its labors.

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<sup>1</sup>Art. 461. 1867.

### AMENDATORY AND ADDITIONAL LAWS.

(To save space and avoid unnecessary repetition, where articles of the following amendatory and additional laws have been incorporated in the text of the Mining Code as hereinbefore translated, reference is made to the article of the Mining Code under which it will be found and to the page of this book.)

#### LAW 292 OF 1875 OF THE STATE OF ANTIOQUIA.

- Art. 1. (Art. 8, M. C.; p. 22.)
- Art. 2. (Art. 17, M. C.; p. 25.)
- Art. 3. (Obsolete.)
- Art. 4. (Art. 90, M. C.; p. 46.)
- Art. 5. (Art. 9, M. C.; p. 22.)
- Art. 6. (Repealed by Law 38 of 1877, Art. 1.)
- Art. 7. (Art. 45, M. C.; p. 33.)
- Art. 8. (Art. 46, M. C.; p. 33.)
- Art. 9. (Art. 56, M. C.; p. 36.)
- Art. 10. (After Art. 56, M. C.; p. 36.)
- Art. 11. (After Art. 56, M. C.; p. 36.)
- Art. 12. (After Art. 56, M. C.; p. 37.)
- Art. 13. (After Art. 56, M. C.; p. 37.)
- Art. 14. (Art. 58, M. C.; p. 38.)
- Art. 15. (After Art. 58, M. C.; p. 38.)
- Art. 16. (Art. 62, M. C.; p. 39.)
- Art. 17. (Repealed by Law 38 of 1877, Art. 3.)
- Art. 18. (Art. 73, M. C.; p. 42.)
- Art. 19. (Art. 74, M. C.; p. 42.)
- Art. 20. (Art. 76, M. C.; p. 43.)
- Art. 21. (Art. 82, M. C.; p. 44.)
- Art. 22. (After Art. 101, M. C.; p. 50.)
- Art. 23. (Replaced by Law 59 of 1909, Art. 2; see Art. 142, M. C.)
- Art. 24. (Art. 149, M. C.; p. 61.)
- Art. 25. (After Art. 149, M. C.; p. 61.)
- Art. 26. (After Art. 149, M. C.; p. 61.)

- Art. 27. (Art. 151, M. C.; p. 61.)
- Art. 28. (Art. 182, M. C.; p. 69.)
- Art. 29. (Art. 257, M. C.; p. 87.)
- Art. 30. (After Art. 354, M. C.; p. 107.)
- Art. 31. (Art. 358, M. C.; p. 107.)
- Art. 32. (After Art. 275, M. C.; p. 91.)
- Art. 33. (Art. 364, M. C.; p. 108.)
- Art. 34. (Art. 375, M. C.; p. 111.)
- Art. 35. (Art. 376, M. C.; p. 111.)
- Art. 36. (After Art. 376, M. C.; p. 112.)
- Art. 37. (After Art. 153, M. C.; p. 62.)
- Art. 38. (After Art. 376, M. C.; p. 112.)
- Art. 39. (After Art. 341, M. C.; p. 104.)
- Art. 40. (Impliedly repealed by Law 40 of 1905, Art. 1; see after Art. 2, M. C.; p. 16.)
- Art. 41. (*Id.*)
- Art. 42. The other mines, spoken of in paragraph numbered 3d of Article 1 of Law 127,<sup>1</sup> and which are in public or State lands, may be denounced and the ownership thereof acquired in the same manner and by following the same procedure as for gold, silver and emerald mines.
- Art. 43. (After Art. 93, M. C.; p. 47.)
- Art. 44. (After Art. 164, M. C.; p. 65.)
- Art. 45. (Impliedly repealed by Law 59 of 1909, Art. 3; p. 65.)
- Art. 46. (After Art. 190, M. C.; p. 71.)
- Art. 47. (After Art. 190, M. C.; p. 71.)
- Art. 48. (After Art. 190, M. C.; p. 71.)
- Art. 49. (After Art. 190, M. C.; p. 71.)
- Art. 50. (After Art. 93, M. C.; p. 47.)
- Art. 51. (After Art. 353, M. C.; p. 106.)
- Art. 52. (After Art. 5, M. C.; p. 20.)
- Art. 53. (After Art. 390, M. C.; p. 115.)
- Art. 54. Articles 17 to 21 inclusive, 38, 87, 150, 223, 260 and 390 of the Code of Mines, and Law 209 amending said Code, are hereby repealed.

<sup>1</sup>Art. 42. *I. e.*, the Mining Code. This article has been superseded in the main by Law 38 of 1887, Art. 2, 9, 5 (after Art. 2, M. C., p. 15).

## LAW 38 OF 1877 OF THE STATE OF ANTIOQUIA.

Art. 1. Article 6 of Law 292 is hereby repealed and in its place there shall remain paragraph No. 7 of Article 33 of the Code of Mines.

Art. 2. (Obsolete.)

Art. 3. Article 17 of Law 292 is hereby repealed, Article 72 of the Code of Mines remaining in place thereof.

Art. 4. *First Part*.<sup>1</sup> (After Art. 5, M. C.; p. 20.)

Art. 5. (After Art. 175, M. C.; p. 67.)

Art. 6. (Art. 14, M. C.; p. 24.)

Art. 7. (*Suspended by resolution of the Supreme Court Dec. 31, 1878, and excluded from adoption as national law by Art. 1 of Law 38 of 1887, p. 14.*)

Art. 8. (After Art. 282, M. C.; p. 93.)

## LAW 64 OF 1886.

Arts. 1, 2, 3. (Validate acts done in the period of transition [1886-1887] from a confederation of sovereign States to a unified centralized government.)

Art. 4. (In note, at beginning of Ch. 11. M. C.; p. 58.)

## LAW 38 OF 1887.

Art. 1. (At beginning of M. C.; p. 14.)

Art. 2. (After Art. 2, M. C.; p. 15.)

Art. 3. (After Art. 5, M. C.; p. 19.)

Art. 4. (After Art. 5, M. C.; p. 19.)

Art. 5. (After Art. 5, M. C.; p. 19.)

Art. 6. (After Art. 5, M. C.; p. 19.)

Art. 7. (After Art. 4, M. C.; p. 17.)

Art. 8. (Repealed by Law 153 of 1887, Art 317.)

Art. 9. (After Art. 93, M. C.; p. 48.)

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<sup>1</sup>Art. 4. The *second* and *third* parts of this article were suspended by Resolution of the Supreme Court, December 31, 1878, and were expressly excluded from adoption as national law by Art. 1 of Law 38 of 1887 (p. 14).

Art. 10. The owners of mines must keep clean the channels of rivers where they throw or discharge refuse or tailings from mine workings, so as to avoid damming up the waters or causing them to overflow.<sup>1</sup>

Art. 11. (Repealed by Law 58 of 1896.)

Art. 12. (After Art. 37, M. C.; p. 31.)

Art. 13. (In note to Chapter X, p. 55.)

#### LAW 75 OF 1887.

Art. 1. In addition to the rights granted by law to denouncers of lode mines (*de filon*) situated in lands belonging to the Nation, they shall have a preferential right to have adjudicated to them under any of the titles provided by the laws in regard to public lands an area up to five hundred hectares in land continuous and adjacent to the claims to which they are entitled by law.

Public lands occupied by alluvial mines cannot be adjudicated (granted) as long as the mines are not abandoned.

Art. 2. The right granted by the preceding article does not affect rights acquired by farmers established in the lands to be adjudicated.

Art. 3. The privilege granted by Article 1 to the owners of mines situated in public lands, extends to those who may have denounced and obtained title to mines of any class whatsoever prior to the promulgation of the present law.

#### LAW 153 OF 1887.

##### LEGISLATION AS TO MINES.

Art. 313. (After Art. 28, M. C.; p. 27.)

Art. 314. (After Art. 5, M. C.; p. 20.)

Arts. 315, 316. (Expressly repealed by Law 58 of 1896.)

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<sup>1</sup>Law 38, 1887, Art. 10. The political authorities must take the necessary steps to enforce this provision, but their orders are provisional merely and in force only until the courts have decided the matters in issue. Exec. Dec. 761 of 1887, Art. 56.

Art. 317. (Articles 2 and 11<sup>1</sup> of Law 38 of 1887 are hereby amended and Article 8 of said law repealed.

EXECUTIVE DECREE No. 761 of 1887.

(Prescribes Executive rules and regulations for the Code; its important provisions have been reproduced or abstracted in appropriate places in the notes.)

LAW 14 OF 1888.

- Art. 1. (In note to Article 2, Law 59 of 1909, p. 58.)
- Art. 2. (After Art. 33, M. C.; p. 29.)
- Art. 3. (After Art. 142, M. C.; p. 59.)
- Art. 4. (Replaced by Article 2, Law 59 of 1909, p. 58.)
- Art. 5. (In note to Dec. 1112 of 1905, after Art. 142, M. C.; p. 60.)
- Art. 6. (After Art. 142, M. C.; p. 59.)

Art. 7. By virtue of the adoption of the Code of Mines and amendatory laws, all the provisions thereof, even those of a temporary character, that are capable of being applied, are and have been in force. The latter class (of temporary character) shall preserve their character as temporary and shall cease to be in force when their purpose has been accomplished.

LAW 56 OF 1894.

(After Art. 175, M. C.; p. 67.)

LAW 58 OF 1896.

Articles 11 of Law 38 of March 15, 1887, law "whereby the Code of Mines of the extinct State of Antioquia is adopted," 315 and 316 of Law 153 of August 24, 1887, law "which adds to and amends the National Codes, Laws 61 of 1886 and 57 of 1887," are hereby repealed.

This law shall go into effect upon being sanctioned.

<sup>1</sup>Law 153, Art. 317. Art. 11 of Law 38 of 1887 was repealed by Law 58 of 1896.



LAW 96 OF 1896.

(Refers only to the National emerald mines at Muzo y Coscuez.)

LAW 30 OF 1903.

Art. 1. (Replaced by Art. 2, Law 59 of 1909, after Art. 142, M. C.; p. 58.)

Art. 2. Machinery, introduced at custom houses of the Republic, destined for working mines of precious metals denounced at or prior to the date of importation, is hereby declared free from import duties. Ore-crushers and rams or stamps for mills are excepted from the foregoing provision.

Art. 3. (Inserted after Art. 1124, Fiscal Code, *infra* p. 145.)

Art. 4. (*Id.*)

Art. 5. (*Id.*)

DECREE No. 1112 OF 1905.

Art. 1. (Rendered obsolete by Law 72 of 1910, Art. 2.)

Art. 2. (After Art. 142, M. C.; p. 60.)

Art. 3. (Repealed by Decree 1328 of 1905, Art. 4.)

Art. 4. (Repealed by Decree 1328 of 1905, Art. 4.)

Art. 5. (After Art. 5, M. C.; p. 20.)

Art. 6. (Amended by Dec. 1328 of 1905.)

Art. 7. (Amended by Dec. 1328 of 1905.)

DECREE No. 1328 OF 1905.

Art. 1. (After Art. 142, M. C.; p. 58.)

Art. 2. (In note to Art. 5, Law 59 of 1909, after Art. 5, M. C.; p. 20.)

Art. 3. (Repealed by Law 19 of 1909, *infra*.)

Art. 4. Articles 3 and 4 of Decree No. 1112 are hereby repealed, and Articles 2, 6 and 7 of said Decree are hereby amended.

## LEGISLATIVE DECREE No. 48 OF 1905.

Art 1. (After Art. 5, M. C.; p. 20.)

Art. 2. Mines belonging to the Nation are not subject to any specified measurement nor to any of the other conditions which the Mining Code imposes on private individuals.

Art. 3. Owners of mines actually being worked at the present time and situated within the area embraced by mines belonging to the Nation, are subject to the expropriation thereof by the Government on the ground of public use and necessity, if the Government deem proper.

Art. 4. The National Amortization Board shall proceed to revindicate any properties that may have been usurped (from the Nation) and to delimit clearly and with precision the area within which the Nation has been in possession of the aforesaid mines. For this purpose and for other purposes of administration and management of the mines, the said Board is hereby authorized to retain the services of lawyers, engineers and employees as may be necessary and incur expenses therefor.

Art. 5. The National Amortization Board is likewise authorized to lease, in whole or in part, all mines belonging to the Nation of which it has charge, as it deems fit, without requiring bids, and to make such leases for a longer term than that fixed in Article 963 of the Fiscal Code.

Art. 6. (Amended by Law 40 of 1905, *infra*, p. 141.)

Art. 7. Emerald mines now under exploitation and those which have already installed works for exploiting them, shall be subject to inspection by the Government, in order that a daily record of their production may be kept, and their owners may sell or export the emeralds provided they have a memorandum noting the quantity and quality thereof. Every sale or exportation of Colombian emeralds, without such requisite aforesaid, is prohibited, under the penalties for the crime of contraband.<sup>1</sup>

Art. 8. The Executive Power is authorized to purchase

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<sup>1</sup>Dec. 48, Art. 7. Emerald sales or exports are still further restricted by Law 40 of 1905, *infra*.

at a price appraised by experts, emerald mines that are being worked in Colombia at the date of the present Decree, and the owners are under the obligation to sell them upon demand of the Government.<sup>1</sup>

LAW No. 40 OF 1905.

Art. 1. (After Art. 2, M. C.; p. 16.)

Art. 2. (After Art. 142, M. C.; p. 60.)

Art. 3. The Government reserves the right to sell the emeralds taken from the mines treated of in the preceding article (emerald mines), and consequently they cannot be freely offered for sale, either in the country or abroad.

Consequently, the Executive shall in due time issue the organic decrees necessary to duly secure the rights of owners of emeralds and at the same time to free emeralds belonging to the Nation from competition in the market.

Art. 4. It is optional for the owners of emerald mines to enter into settlements with the Executive Power, which is hereby authorized to indemnify them for the expenses incurred in denouncing and obtaining title and adjudication and for work undertaken at the mines to discover lodes and veins, in the construction of aqueducts, bridges, buildings and other similar works whatsoever of indispensable character undertaken at the mines with a view to their exploitation, provided the owners cede all the rights acquired by them to the Nation.

§1. The value of such expenses and works shall be appraised at a fair valuation by experts named, one by each of the contracting parties and a third by the President of the Supreme Court of Justice. These experts shall give their decision in view of the vouchers presented to them, and the Government may increase the appraisal by the increased value the mines may have acquired in the market.

§2. This increased value shall be appraised by experts named conformably to the preceding paragraph, taking as a

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<sup>1</sup>Arts. 7 and 8. Executive Decree No. 981 of 1905 prescribed the detailed regulations for the purchase and valuation of emerald mines.

basis the original cost of each enterprise and the value that the shares in which it was divided had at the time of the issuance of the Legislative Decree No. 48 of March 9, 1905.

§3. The value of the emerald mines or of the shares therein at the time mentioned in the preceding paragraph cannot be other than that fixed in the transactions which took place at such time for such mines or for shares therein, which shall be proved by credible documentary evidence.

Art. 5. For the purpose of the preceding article the parties in interest are obliged to prove the existence of the mine by surveys undertaken by mineralogists or competent persons, and by specimens taken therefrom.

Art. 6. Until the circumstances prescribed in this law have been complied with, the owners of emerald mines duly denounced and patented (under title) shall continue to pay the same rental as prescribed by the prior laws.

#### PROVISIONS OF THE FISCAL CODE<sup>1</sup> AND AMENDMENTS RELATING TO MINES.

##### TITLE 4.

[Title 4, Arts 426 to 505 treat of the Government monopoly of salt, taxes on and prices of salt, administration of the National salt works, leases by the Government of its salt mines, penalties for violation of the law and policing. It does not fall within the scope of this book to insert more than one or two of the leading articles.]

Art. 426. The Nation conserves the exclusive ownership of all salt mines and salt springs discovered or that may hereafter be discovered in the territory of the Republic, until such time as it becomes possible for it to abandon such monopoly.

Salt springs that may exist or be discovered in lands that are or may have been the property of the Nation in the States of Cauca, Antioquia and Tolima, can be worked by private persons without any restriction whatsoever. The working

<sup>1</sup>Taken from the last edition (official) of the Code, 1905.

of such salines, for one year without interruption, gives the exploiters title to said salines and to ten adjoining hectares of the public or National lands. It is understood that the salt springs referred to in this article are those whose degree of concentration is not in excess of six degrees, Baume areometer. (Art. 1, Law 13 of 1883.)

The provisions of Law 13 of May 20, 1883, amending Law 13 of June 20, 1853, additional to the Law of Salines, are hereby extended to the Department of Santander.

Art. 427. The Nation likewise conserves the monopoly of the preparation of salt and the monopoly of the exploitation of salt mines belonging to it under the terms expressed in the present title.

## TITLE 14.

### MINES.

Chapters 1 and 2 (*entitled mines of precious metals and emerald mines respectively*) comprising Articles 1102 to 1115, inc., have been replaced by divers provisions of the Mining Code and amendatory laws.

## CHAPTER 3.

### COAL MINES, GUANO AND OTHER FERTILIZER DEPOSITS.

Art. 1116. The Republic reserves the ownership of coal mines and deposits, as also those of guano and any other similar fertilizer whatsoever that may be found in the public lands of the Nation or in lands that may belong to it by virtue of any other title.

Art. 1117. The mines and deposits aforesaid shall not be deemed sold nor adjudicated with the land, and shall be worked for the account of the Republic under contracts made therefor by the Executive Power.

Art. 1118. Contracts entered into by the Executive Power for the exploitation of coal mines and fertilizer deposits, the ownership whereof the Republic has reserved,

may be carried out without the necessity of approval by the Congress,<sup>1</sup> provided the contractors accept the following clauses:

1. That the duration of the contracts does not exceed fifty years.

2. That at the expiration of said contracts, cart roads and railroads, machinery, apparatus and all other material for exploitation used by the operators (*empresarios*) becomes the property of the Republic.

3. That the Republic's share in the benefits of the exploitation shall not be less than 15 per cent of the net profits of the enterprise.

Art. 1119. In order that the Executive Power may cause coal mines or deposits belonging to private persons, situated in the States on the Atlantic Coast, to be worked for account of the Republic, it shall enter into suitable contracts therefor with the respective owners, which shall be submitted for approval to the Congress.

Art. 1120. The authority conferred upon the Executive Power to work coal mines and deposits for account of the Republic comprises likewise authority to construct cart roads or railroads, canals connecting the divers places of exploitation with one another and with the river and seaports from which it may be expedient to ship the coal, and docks, wharves and other necessary works at such ports. Such roads and works shall have the natural character of public utility enterprises.

Art. 1121. The Executive Power shall, if it deem fit, suspend the adjudication of public lands in territories wherein coal mines and deposits are reserved by the Republic; or shall make such adjudications with the necessary reservations so that future road construction to facilitate and open up shipments of coal worked for the account of the Nation shall not be obstructed.

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<sup>1</sup>Semble impliedly repealed by Law 30 of 1903, *infra*, after Art. 1124, although the official edition of the Fiscal Code prints both as existing law.

Art. 1122. In every case where the Executive Power resolves to exploit or work coal mines or deposits, it may enter into agreements for the compromise of suits or claims. Such agreements shall be submitted for approval to the Congress.

Art. 1123. The Executive Power shall cause the boundaries of public and privately owned lands adjacent to coal deposits and mines to be determined; and shall proceed to ascertain, through the employees of the Public Attorney's office (*agentes del Ministerio Publico*) the rights the Republic may have in said lands.

Art. 1124. Ten per cent of the Republic's share of the net profits in enterprises to work coal mines or deposits for account of the Republic shall belong to the State or States within whose territory such enterprises are organized. From such share there shall be deducted the subsidies received by the respective States from the National Treasury, except only the subsidy granted to the State of Panama by Article 3 of the contract dated August 16, 1867, reforming the contract of April 15, 1850, in regard to the construction of a railroad from one ocean to the other across the Isthmus of Panama.

### *Law 30 of 1903.*

Art. 3. The provisions of the Fiscal Code relative to coal mines shall likewise apply to deposits of asphalt of any kind, consistency or color whatsoever, to mines of petroleum or mineral oil and natural gas, and to any other products whatsoever of the same or analogous nature.

Art. 4. The situation, in respect to the seacoast or navigable rivers, of coal mines and deposits of asphalt, petroleum, etc., referred to in the Fiscal Code and this law, in nowise affects the rights which the Nation reserves over such mines or deposits, nor creates any distinctions between the various deposits for the purpose of making possible their temporary or definitive alienation or their exploitation under special conditions.

Art. 5. No contract made by the Government for the alienation or exploitation of coal mines, deposits of asphalt, petroleum or natural gas belonging thereto shall be valid without the approval of the Congress.

*Law 45 of 1905, Art. 2.* Private persons are permitted to discover and denounce, in land belonging to the Nation, coal mines for the purpose of exploiting the fuel needed by the Government; and the discoverer or denouncer shall have the right for ten years to 15 per cent of the net product of the enterprise, and provided he prove in the judgment of experts that the mine is sufficiently rich to warrant its exploitation.

#### CHAPTER 4.

#### LEASE OF THE MINES OF SANTA ANA AND LA MANTA AND SUPIA AND MARMATO.

(The official edition of the Fiscal Code states that the only article [1125] under this chapter is obsolete and omits it, publishing under the above caption only Art. 5 of Leg. Decree No. 48 of 1905, *q. v., supra*, p. 140.)

#### CHAPTER 5.

#### MISCELLANEOUS PROVISIONS.

##### *Mines of Base Metals.*

Art. 1126. Mines of copper, iron and other base metals, those of sulphur and others not expressed in this title that may be discovered in public lands or lands belonging to the Nation, likewise belong to the Union,<sup>1</sup> and in regard to their exploitation, lease, adjudication, etc., the analogous provisions contained in the preceding chapters and in the Code of Development (*Fomento*) shall be applicable.

Art. 1127. The mines of Alta, Baja y Vetas, situated in the sovereign State of Santander and ceded to said State by

<sup>1</sup>Art. 1126. In contradistinction to the sovereign states in existence at the time the Fiscal Code became law. As to mines of base metals, see Art. 2, M. C., and amendments thereto.



Legislative Decree of June 5, 1868, comprise all the appurtenances which the Nation may have in and to said mines.

LAW No. 21 OF 1907.

Arts. 1, 2, 3, 4. (Expressly repealed by Art. 7, Law No. 72 of 1910, *infra*, p. 148.)

Arts. 5, 6. (After Art. 142, M. C.; p. 60, n. 1.)

Art. 7. (After Art. 2, M. C.; p. 16.)

Art. 8. (After Art. 142, M. C.; p. 60.)

DECREE No. 777 OF 1908.

Establishing a mineralogical museum. (Expressly repealed by Decree No. 1016 of 1910.)

LAW No. 19 OF 1909.

Art. 1. From the date of the sanction of this present law metals extracted from the mines of the country shall be free from export duties.

Art. 2. All contrary provisions are hereby repealed.

LAW No. 59 OF 1909.

Art. 1. Import duties on the articles specified in the following list shall be collected, treating them as belonging to the second class of the customs tariff which pays one cent per kilogram. Such articles are: Cyanide of potassium, zinc, lead, litarginum, reagents for laboratory assays in small quantities, machinery, such as pumps, crushers, concentrating mills, dynamos, electric motors, transmission wire, power machinery for mines, either by steam or water, piping and iron, hemp or cotton cables, transmission belts of leather, cotton, hemp, rubber or a mixture of these, paste and lubricant for transmission belts, lubricating oils, rubber or rubber and cotton hose, rams, drills, hammers, iron pipe-fittings, iron nuts and axles, copper or iron fly-wheels, powder, dynamite, percussion caps and fuses for mines, iron pulleys, asbestos and mercury.

- Art. 2. (After Art. 142, M. C.; p. 58.)
- Art. 3. (After Art. 164, M. C.; p. 65.)
- Art. 4. (After Art. 43, M. C.; p. 32.)
- Art. 5. (After Art. 5, M. C.; p. 20.)
- Art. 6. (Re-enacts verbatim Art. 3, Law 30 of 1903, *supra*, p. 145.)
- Art. 7. (Re-enacts verbatim Art. 4, Law 30 of 1903, *supra*, p. 145.)
- Art. 8. (Re-enacts verbatim Art. 5, Law 30 of 1903, *supra*, p. 146.)
- Art. 9. The (Executive) Decree shall prescribe suitable regulations for the present law.
- Art. 10. The present law shall go into effect forthwith upon its promulgation.

LAW No. 72 OF 1910.

- Art. 1. (After Art. 2, M. C.; p. 16.)
- Art. 2. (After Art. 2, M. C.; p. 16.)
- Art. 3. (After Art. 175, M. C.; p. 68.)
- Art. 4. (After Art. 2, M. C.; p. 17.)
- Art. 5. (After Art. 2, M. C.; p. 17.)
- Art. 6. (After Art. 2, M. C.; p. 17.)
- Art. 7. Articles 1 to 4, inclusive, of Law 21 of 1907 are hereby repealed.

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<sup>1</sup>The Boston Book Company announces this work for publication in 1912, in English, as volume II, in the series “The Commercial Laws of the World.”

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## INDEX

References are to pages.

- Abandonment, of mines and claims.....28, 32, 36, 41, 45, 51, 53,  
54, 60, 64, 104 *seq.*, 112  
*seq.*  
of part of mine.....61 *seq.*  
property left, on.....105  
restoring (relocation) after.....21, 28, 51, 54, 93, 94, 104  
*seq.*  
waters after .....78
- Abutting Owners (see also Opposition, Bounda-  
ries) . . . . .31, 51, 112, 118 *seq.*
- Accidents .....70, 72 *seq.*, 102.
- Acreage (see Area).
- Adverse Claim (see Opposition).
- Agent, Discovery and denouncement by.....21, 31, 109  
opposition by .....39, 40, 116, 117  
possession by .....96, 97, 98  
powers of .....35, 64, 93, 116, 117
- Agricultural Lands .....18, 19, 20, 67, 68, 69, 137
- Aliens .....8, 15, 16
- Alluvial Mines .....15, 19, 20, 22, 25, 27, 32,  
59 *seq.*, 131
- Amendment of location.....26
- Annual Labor, none required.....10, 105
- Appeals .....24n., 36, 121, 123, 124, 128
- Application for Patent.....41 *seq.*
- Aqueduct, right of.....69 *seq.*
- Area of Claims.....15, 25 *seq.*, 35, 62
- Arbitrators .....87, 128
- Asphalt Deposits .....145
- Assessments (see Stockholders).
- Base Lines .....26, 111, 112
- Base Metals, mines of.....15, 25, 60, 146
- Boundary, staking (see Survey and Possession) ..22, 26n.  
suits .....40, 112, 118 *seq.*
- Building Materials .....17, 69, 74
- Cauca River .....20
- Choco*, restrictions on aliens in.....16
- Citation (see Service, Publication).
- Claim (see Area, Alluvial, Lode, etc., Mines,  
Survey, Possessions, etc.).
- Classification of Mines.....25

- Coal Lands and Mines.....15, 143 *seq.*
- Companies .....29, 31, 80, 85 *seq.*, 126
- Condemnation (see Damages).
- Constitution, provisions of.....14
- Continuation, denouncement of.....31
- Conveyance, before title .....31
  - after title .....31, 96n.
  - of possessory right.....96 *seq.*
- Copper Mines .....15, 16, 25, 47, 48, 60, 146
- Corporation (see Companies, Stockholders, Foreign Corps).
- Custom Duties .....139, 147
- Damages (see also Indemnities).
  - by waters .....78
  - for negligence .....102, 103
  - for land, ditch, right of way, etc.....71, 72 *seq.*
  - to public works.....68
- Darien* (see Choco).
- Deed (see Conveyance, Title).
- Defaults, when opened.....33, 37, 42, 64, 131 *seq.*
- Denouncement .....19 *seq.*, 26, 28 *seq.*, 31, 32, 53, 58, 93, 94, 104, 105 *seq.*
- Deserted Mines (see Abandonment).
- Discoverer (see Discovery).
- Discovery and Notice of.....18, 19, 20, 21 *seq.*, 44, 53, 54, 75
- Ditches .....69 *seq.*, 75 *seq.*, 101
- Easements (see Servitudes).
- Ejectment (see also Possessory Suits, etc.).....95 *seq.*, 99 *seq.*
- Emeralds .....15, 16, 60, 140 *seq.*
- End Lines (see also Survey).....111
- Excess Claims .....46, 48, 50, 62
  - denouncement of .....28, 105, 109 *seq.*
- Experts .....35, 38, 69, 72, 74, 80, 111, 128, 132
- Export Duties, abolished.....147
- Extensions (see Continuations).
- Falling Buildings, etc.....101, 102
- Fees (see Taxes).
- Fertilizer Deposits .....15, 143
- Fixtures .....105, 121, 122
- Forcible Dispossession and Entry.....101, 122, 123, 124
- Foreign Corporations .....16, 17, 85
- Forfeiture (see Abandonment).
- Fraud (see Agency, Companies, Defaults, Possession).



Gas, natural .....	146
<i>Guacas</i> .....	24
<i>Guano</i> (see Fertilizer).	
Gold Mines .....	14, 15, 20, 25, 27, 32, 47, 48, 58 <i>seq.</i>
Heir, possession of.....	96, 98 <i>seq.</i> , 100
Highways (see Public Works).	
History of mining law.....	5 <i>seq.</i>
Holidays .....	37
Improvements .....	67 <i>seq.</i>
Indian Graves .....	24
Indemnities (see also Damages).....	68, 72 <i>seq.</i> , 102 <i>seq.</i> , 127, 128
Injunction .....	101, 102, 122 <i>seq.</i>
Interventors (Receivers) .....	79 <i>seq.</i> , 90, 94
Iron Mines (see Base Metals).	
<i>Jumping Claims</i> (see Abandonment; Titles, when void).	
Law, what, governs.....	132, 138
Lease (see Conveyance).	
<i>Lesion Enorme</i> .....	96n.
Liens .....	130
Litigation, operation during .....	64, 79 <i>seq.</i>
ordinary suits .....	110, 131 <i>seq.</i>
special suits .....	127 <i>seq.</i>
(See also Boundaries, Possessory Suits and Actions, Injunctions.)	
Location (see Discovery, Denouncement, Title).	
Lode Mines .....	15, 20, 22, 25, 30, 48, 59 <i>seq.</i> , 131
Married Women .....	31n.
Mining Code, adoption of.....	14, 132
Mortgage .....	90, 91, 96
Name of Mines.....	29, 48, 50, 106
National Mines .....	19, 20, 140, 146
Navigable Rivers, not denounceable.....	20
Negligence (see Damages).	
Notice (see also Publication, Service, Discovery) ..	33 <i>seq.</i> , 44 <i>seq.</i> , 88 <i>seq.</i> , 91
Oil Land .....	145
Opposition (Adverse) .....	30n., 33, 39 <i>seq.</i> , 45, 47n., 108 <i>seq.</i> , 111 <i>seq.</i> , 114 <i>seq.</i>
By whom .....	39, 40, 112, 119
Proceedings after determination.....	37, 41
Waiver and failure to assert.....	53, 108

Ownership, how acquired.....	17
(See also Title.)	
Partition .....	63, 93, 96
Partnership .....	29, 31, 52, 80, 85 <i>seq.</i>
Patent (see Title).	
<i>Pertenencia</i> .....	25
Placers (see Alluvial Mines).	
Platinum .....	14, 15, 16, 17, 48, 60
Pleading and Practice .....	33, 39 <i>seq.</i> , 43, 66, 99 <i>seq.</i> , 103, 108, 113 <i>seq.</i> , 126, 127
Possession, grant by authorities.....	32 <i>seq.</i> , 107 <i>seq.</i> , 117 <i>seq.</i>
acquisition, maintenance, and loss....	44, 55 <i>seq.</i> , 64, 65, 96 <i>seq.</i> , 113, 123, 124
definition and kinds.....	94, 95 <i>seq.</i>
summary proceedings .....	120 <i>seq.</i>
Possessory Actions .....	99 <i>seq.</i> , 113
Precious Stones .....	14, 15, 25, 59
Priority, as between claimants.....	46 <i>seq.</i> , 53 <i>seq.</i>
as between creditors.....	130
Prospecting .....	18, 19, 73
Protection, by authorities.....	55 <i>seq.</i>
Publication .....	33, 34, 45, 88, 91, 107, 130
Public Lands (see also National Mines).....	14, 135, 137, 143
Works .....	18, 24, 67, 68, 144
Receivers (Interventors) .....	79 <i>seq.</i> , 90, 94, 96
Record and Registration.....	48 <i>seq.</i>
Relocation (see Abandonment).	
Retention of Mines.....	55 <i>seq.</i> , 64, 65
Right of Way.....	69, 73 <i>seq.</i>
Salines and Salt Mines.....	14, 15, 142 <i>seq.</i>
Sedimentary Mines .....	15, 25, 27
Service (see Publication).....	34, 51, 64, 88 <i>seq.</i> , 107 <i>seq.</i> , 108, 111, 123
Servitudes .....	17, 28, 67 <i>seq.</i> , 73 <i>seq.</i> , 76, 101
Shares .....	86 <i>seq.</i> , 126
Silver Mines .....	14, 15, 25, 47, 48, 58 <i>seq.</i>
Stakes .....	22, 26, 35, 111
Stock and Stockholders.....	86 <i>seq.</i> , 126
Summary Proceedings for Possession.....	120 <i>seq.</i>
Surface, rights of owner of.....	15, 16, 17, 19, 24, 131
rights to tunnel under.....	17
Survey .....	26 <i>seq.</i> , 35, 110, 111, 112
Tailings .....	137
Taxes and fees.....	30, 38, 42, 45, 46, 49, 53, 58 <i>seq.</i> , 93, 95, 104, 105, 117, 132

# INDEX—Cont.

v

Tenancy in Common.....	96
Timber and Stone (see Building Material, Public lands).	
Titles, ancient, validated .....	46
correction of .....	46 seq., 49 seq.
patented (Government) .....	17, 41 seq., 59, 108, 112
protocolization of .....	46, 132 seq.
record and registration.....	48 seq.
lost; proceedings upon.....	43
revalidation of .....	55
when void or voidable.....	19, 48 seq.
Treasure, buried .....	24
Trespasser (see Possession).	
Trespasser, right of, to improvements, etc.....	121 seq.
Usufructuary, possession of.....	96, 100 seq.
Vein (see Lode).	
Waste .....	121
Waters .....	24, 32, 67, 68, 69 seq., 75 seq., 127, 137
Witnesses .....	56
Working, during litigation .....	79 seq.
restrictions on .....	67 seq.
excess claims, not allowed before grant of possession .....	109

Ev JJ  
12/21/13









